

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 656.

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CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT,  
AND CHARLES BAKER, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF OHIO.

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FILED AUGUST 20, 1917.

(26,123)



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*vs.*

THE UNITED STATES OF AMERICA.

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THE NORTHERN DISTRICT OF OHIO.

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1 THE UNITED STATES OF AMERICA,  
*Northern District of Ohio, ss:*

At a stated term of the District Court of the United States, within and for the Northern District of Ohio, begun and held at the City of Cleveland, in said District, on the first Tuesday in April, being the third day of said month, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America the one hundred and forty-first.

Present: Honorable D. C. Westenhaver, U. S. District Judge.

Among the proceedings then and there had were the following, to-wit:

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

VS.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT and CHARLES BAKER.

Be it remembered that heretofore, to-wit: on the 27th day of June, A. D. 1917, came a Grand Jury of the United States, to wit: A. H. Babcock, E. K. Bebb, Henry Brunner, James W. Butler, Hugh Collins, George F. Copeland, Charles Dreiblebis, D. E. Graver, Charles H. Krauter, John E. Main, James Miers, Charles A. Miner, W. W. McIntosh, Julius Renker, C. K. Russell, Adam, J. Stiefel, Emmet F. Taggart, W. H. Thompson, J. B. Trall, Fred Witt, which said Grand Jury returned an Indictment, endorsed "A True Bill, Emmet F. Taggart, Foreman of Grand Jury," which Indictment is in the words and figures following, to-wit:

2 (*Indictment.*)

In the District Court of the United States of America for the Northern District of Ohio, Eastern Division, of the April Term, in the year 1917.

No. 3873. Criminal.

NORTHERN DISTRICT OF OHIO,  
*Eastern Division, ss:*

The Grand Jurors for the United States of America empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Ohio, at the April Term thereof in the year 1917, and inquiring for that division and district, upon their oath present that Alphons J. Schue on June 5, 1917, at Cleve-

land, in said division and district, was a male person between the ages of twenty-one and thirty both inclusive, to wit, a male person who then had attained his twenty-first birthday and who did not on that day attain and had not before then attained his thirty-first birthday, and as such person was then and there required, by the Proclamation of the President of the United States dated May 18, 1917, to present himself for and submit to registration, under the Act of Congress approved May 18, 1917, and entitled "An Act to authorize the President to increase temporarily the military establishment of the United States," at the regular registration place in the city of Cleveland, 4th ward, precinct "L" in said division and district, between 7 A. M. and 9 p. m. on said June 5, 1917, that precinct then being the precinct wherein said Alphons J. Schue then had his permanent home and actual place of legal residence, from which he was not then temporarily absent; that said Alphons J. Schue so then and there being such person, unlawfully did wilfully fail and refuse so then and there to present himself for registration and to submit thereto as in said Act provided and in said Proclamation appointed; he the said Alphons J. Schue then and there not being an officer or an enlisted man of the Regular Army, of the Navy, of the Marine Corps, or of the National Guard or Naval Militia in the service of the United States, or an officer in the Reserve Corps or an enlisted man in the Enlisted Reserve Corps in active service; and that Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker each late of Cleveland aforesaid, and each well knowing said Alphons J. Schue to be such person subject to such registration, at Cleveland aforesaid, in said division and district, before and at the time of his so doing, unlawfully did aid, abet, counsel, command and induce said Alphons J. Schue in so unlawfully and wilfully failing and refusing to present himself for registration and to submit thereto as aforesaid, and procure him to commit the offense involved in his so doing; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

E. S. WERTZ,  
*United States Attorney.*

(Endorsement:) No. 3873. District Court of the United States for the Eastern Division of the Northern District of Ohio. The United States vs. Alphons J. Schue, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker. Indictment. For violation of Act of May 18, 1917. A True Bill. E. F. Taggart, Foreman of Grand Jury. E. S. Wertz, U. S. District Attorney. Filed Jun- 27, 1917. B. C. Miller, Clerk, U. S. District Court N. D. O.

4      *Challenge to the Array of the Grand Jury and Petit Jury.*

(Filed July 14, 1917.)

In the District Court of the United States for the Northern District  
of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER, Defendants.

*Challenge to the Array of the Grand Jury and Petit Jury.*

Come defendants Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker, and by leave heretofore granted withdraw their pleas heretofore entered.

Said defendants represent to the Court that they were indicted by the alleged grand jury herein without any sworn charge having been filed against them and without any preliminary examination and therefore had no knowledge or means of knowledge of any criminal proceedings contemplated by said alleged grand jury, and had no opportunity to challenge the array of said grand jury before it was impaneled and sworn.

Said defendants now challenge the array of said alleged grand jury herein, and the array of the petit jury herein, and move the court for an order declaring both panels null and void and the proceedings had by said alleged grand jury null and void, for the defects and errors in the selecting, drawing, summoning, and choosing of said panels and juries, hereinafter set forth, same being prejudicial to these defendants, to wit:

- 5      1. That the names of all persons selected for jury service in this court were selected and put in the jury-box by two men appointed a commission for that purpose solely on political consideration and because of their prominence in partisan politics as members of the largest two political parties of this judicial district, to-wit, the Republican and Democratic Parties. That defendants are members and officers of the Socialist Party, a minor political party in said district, which was and is without representation on said commission; the offense charged was, if committed by these defendants, a part of their duties and activities as said members and officers and a part of their propaganda to defeat said Republican and Democratic Parties at the polls and deprive the partisans of said parties, including said commissioners, of political office; that the platforms and principles of said Republican and Democratic Parties are opposed to the platform and principles of said Socialist Party, and said two jury commissioners as partisans of said two

first-named parties, appointed on partisan consideration, are and of necessity must be hostile to and prejudiced against these defendants.

2. That all the names selected and put in the jury-box were names of adherents of said Republican and Democratic Parties exclusively, and did not include the names of any adherents of the Socialist Party to which defendants belong, although there were and are numerous persons in said district qualified to serve on said juries, who are members of the Socialist Party but are excluded from such service by reason of their adherence to said Socialist party. That all the persons selected for jury service were and are, by reason of their adherence to said Republican and Democratic Parties and

6 for other reasons, hostile to and prejudiced against these defendants as members of the Socialist Party and against the political propaganda which constitutes the alleged offense of these defendants. That to permit defendants to be indicted and tried by juries composed exclusively of their political adversaries will deprive them of their constitutional rights to the equal protection of the law, to justice, to trial by an impartial jury, to due process of law; and will be contrary to Sec. 275 Judicial Code, and contrary to the grant of equal rights under the Act of May 31, 1870, c. 114, sec. 16.

3. That the names so selected and placed in said jury-box were taken exclusively, or almost exclusively, from the names of land-owners, property-owners, and capitalists; that the names drawn and picked from said box for the grand and petit juries herein are names exclusively of land-owners, property-owners, and capitalists. That defendants are all proletarians, that is to say, landless and property-less wageworkers, with interests adverse to those of landlords, employers, and capitalists; that the propaganda aforesaid constituting the alleged offense of these defendants advocates the rights of proletarians as opposed to those of landlords, employers, and capitalists, and urges the abolition of Rent, Interest, and Profit, which are the principal sources of income of the jurors so drawn and of the others whose names were placed in said jury-box. That said jurors so drawn are and of necessity must be by reason of their private interests hostile to and prejudiced against these defendants as Socialists and as advocates of such abolition. That there were and are many thousands of persons in said district qualified to serve on said

7 juries who do not derive their income from Rent, Interest, or Profit and would therefore not be rendered hostile to and prejudiced against defendants because of their private interests, but said persons are excluded from said jury service. That to permit defendants to be indicted and tried by juries so selected and drawn will deprive them of their constitutional rights as above set forth, and be contrary to the spirit, purpose, and letter of Sec. 277 of the Judicial Code.

4. That said juries have been selected and drawn exclusively from the Eastern Division of the Northern District of Ohio, instead of from the entire District, contrary to the Sixth Amendment of the Constitution of the United States.

5. That the jury-box from which were drawn the names for said juries had not been emptied at any time within recent years nor refilled since November, 1916, many months prior to said drawings; that many juries have been drawn from said box since said November, and no evidence is obtainable of the number of qualified names in said jury-box at the time of said drawings, and in fact said box did not at the time of said drawings contain the names of 300 qualified persons as required by Judicial Code, sec. 276. That many of the names now in said box were selected and put there by one Jeremiah J. Sullivan, a former commissioner who has not held office for more than a year past. That of the persons sitting on said alleged grand jury three (3) had been so selected and their names put in said box by said Sullivan; and of the persons drawn for said petit jury three (3) had been so selected and their names put in said box by said Sullivan; and said Sullivan's term had expired prior to said drawings; and the names of said six jurors had not been selected and put in the box by either of the persons authorized to do so at the time of said drawings or at the time the order

8 for said drawings was issued. Contrary to Sec. 276 Judicial Code.

6. That the Marshal and his Deputy who served the writs of venire for both of said juries were not "indifferent persons" as required by Sec. 279 Judicial Code, but active adherents of the Democratic Party and political adversaries of the defendants, said Marshal being an active member of the Democratic Club of Cleveland and a former member and president of the City Council.

7. That the jury-box used for said drawings was small and rectangular and incapable of being rotated so as to shake together and mingle the names; that there was in fact no attempt to draw said names by lot, but the Clerk of the Court, in the presence of the Marshal, both of whom were political adversaries of defendants and hostile to them, selected from said box such names as said Clerk preferred for these proceedings. That said Clerk did in fact select from said box the names exclusively of adherents of the political parties adverse to that of the defendants and of persons likely to be and in fact hostile to and prejudiced against these defendants. That thereby defendants have been deprived of their constitutional right of due process of law and of trial by an impartial jury of their peers.

8. That *such all* portion of said juries as resided outside the city of Cleveland were summoned by mail; that the actual delivery of the summons in such cases was not by any officer of the court or other qualified person, but by a person unknown, to-wit, a letter-carrier; that twenty-two were thus summoned by mail for said grand jury, and fourteen thereof accepted and sworn; that fifteen  
9 were thus summoned by mail for said petit jury. That of said grand jurors so summoned by mail and serving, seven were designated not by their Christian names but by initial only, and the summons mailed not to any street-number but simply to the town or city where such person was believed to reside; that of



the twenty-two thus summoned by mail for the grand jury, three were addressed to towns of which the names were misspelled or which do not exist in Ohio, to-wit: D. E. Graver, "East Claredon, Ohio," Harry J. Griffin, "Copely, Ohio," and P. E. Wigton, "Lucas, Ridgeland County, Ohio" (there being no Ridgeland County within the jurisdiction of this court or in Ohio), and of these one D. E. Graver (a different name) was sworn in and served. That of the fifteen thus summoned by mail for the petit jury, two were addressed to towns which either do not exist in Ohio or the names of which were misspelled, to-wit, H. E. Cogsil, "Kilgour, Ohio," D. W. Millinger, "Leonia, Ohio," and one was addressed as follows, "R. B. Richards, Kent," (without designating any state), there being numerous towns of that name in the United States, notably in Connecticut, Illinois, Indiana, and Iowa; and two were addressed as follows, "A. C. Beels, Burton, Ohio," and "Allen Mills, Burton, Ohio," there being one town named "Burton" in Geauga County, and another town named "Burton City" in Wayne County, and there being no such names, spelt in such manner, among the persons named in the jury-box. Further, that of the fifteen persons summoned by mail for the petit jury, nine are designated not by their Christian names but by initial only, and the summons mailed not to any street number but simply to the town or city where such person was believed to reside. That by reason of the neglect of all safeguards

both as to the manner of serving and the summons and the identity of the persons so summoned, defendants are deprived of their constitutional right of due process of law and of trial by an impartial jury of the State and District;

9. That there are nineteen counties composing the Eastern Division of the Northern District of Ohio, but that the Clerk in drawing the names for said grand jury did not draw any names from seven of said counties, to-wit, Ashland, Ashtabula, Carroll, Holmes, Medina, Tuscarawas, and Trumbull, but drew six from Cuyahoga; and in the grand jury as accepted nine counties were without representative. That in the drawing of names for said petit jury the Clerk has drawn 5 from Cuyahoga, 4 from Columbiana, and 3 from Ashtabula, but has not drawn any names from 8 counties within said Division, to-wit, Crawford, Holmes, Lorain, Mahoning, Richland, Summit, Tuscarawas, and Trumbull. That this unequal distribution of jurors and failure to select names from large portions of the territory within the District and confining such drawings to only a part of said District, is in violation of Sec. 277 of the Judicial Code and of the constitutional right of defendants to be tried by an impartial jury of the State and District.

10. That both the grand and petit juries were special juries ordered for a special purpose; that by Sec. 284 of the Judicial Code the defendants above named, and that the facts set forth in the form as is required in such cases by the laws of Ohio, but failed so to do.

11. That said grand jury purported to be summoned under Sec. 284 of the Judicial Code and was summoned before the then acting

- 11 grand jury had been discharged, but the district attorney failed to certify in writing that the exigencies of the public service required it.

MORRIS H. WOLF,  
JOSEPH W. SHARTS,  
*Attorneys for Defendants.*

STATE OF OHIO,  
*Cuyahoga County, ss:*

Charles E. Ruthenberg, being duly sworn says that he is one of the defendants above named, and that the facts set forth in the foregoing pleading are true as he verily believes.

CHARLES E. RUTHENBERG.

Sworn to and subscribed in my presence by the said Charles E. Ruthenberg this 14th day of July, A. D. 1917.

[SEAL.]

MORRIS H. WOLF,  
*Notary Public in and for Said County.*

- 12 *Amended Challenge to the Array of the Grand Jury and Petit Jury.*

(Filed July 21, 1917.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES BAKER, Defendants.

*Amended Challenge to the Array of the Grand Jury and Petit Jury.*

Come defendants Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, and by leave heretofore granted withdraw their pleas heretofore entered.

Said defendants represent to the Court that they were indicted by the alleged grand jury herein without any sworn charge having been filed against them and without any preliminary examination and therefore had no knowledge or means of knowledge of any criminal proceedings contemplated by said alleged grand jury, and had no opportunity to challenge the array of said grand jury before it was impaneled and sworn.

Said defendants now challenge the array of said alleged grand

jury herein, and the array of the petit herein, and move the Court for an order declaring both panels null and void and the proceedings had by said alleged grand jury null and void, for the defects and errors in the selecting, drawing, summoning, and choosing of said panels and juries, hereinafter set forth, same being prejudicial to these defendants, to-wit:

1. That the names of all persons selected for jury service in this Court were selected and put in the jury-box by two men appointed a commission for that purpose solely on political consideration and because of their prominence in partisan politics as members of the largest two political parties of this judicial district, to-wit The Republican and Democratic Parties. That defendants are members and officers of the Socialist Party, a minor political party in said district, which was and is without representation on said commission; the offense charged was, if committed by these defendants, a part of their duties and activities as said members and officers and a part of their propaganda to defeat said Republican and Democratic Parties at the polls and deprive partisans of said parties, including said commissioners, of political office; that the platforms and principles of said Republican and Democratic Parties are opposed to the platform and principles of said Socialist Party, and said two jury commissioners as partisans of said two first-named parties, appointed on partisan consideration, are and of necessity must be hostile to and prejudiced against these defendants.

2. That all the names selected and put in the jury-box were names of adherents of said Republican and Democratic Parties exclusively, and did not include the names of any adherents of the Socialist Party to which defendants belong, although there were and are numerous persons in said district qualified to serve on said juries, who are members of the Socialist Party but are excluded from such service by reason of their adherence to said Socialist Party. That all the persons selected for jury service were and are, by reason of their adherence to said Republican and Democratic Parties and for other reasons, hostile to and prejudiced against these defendants as members of the Socialist Party and against the political propaganda which constitutes the alleged offense of these defendants.

14 That to permit defendants to be indicted and tried by juries composed exclusively of their political adversaries will deprive them of their constitutional rights to the equal protection of the law, to justice, to trial by an impartial jury, to due process of law; and will be contrary to Sec. 276 Judicial Code, and contrary to the grant of equal rights under the Act of May 31, 1870, c. 114, Sec. 16.

3. That the names so selected and placed in said jury-box were taken exclusively or almost exclusively, from the names of land-owners, property-owners, and capitalists; that the names drawn and picked from said box for the grand and petit juries herein are names exclusively of land-owners, property-owners, and capitalists. That defendants are all proletarians, that is to say, landless and propertyless wage-workers, with interests adverse to those of land-lords, employers, and capitalists; that the propaganda aforesaid constituting the alleged offense of these defendants advocates the rights

of proletarians as opposed to those of landlords, employers, and capitalists, and urges the abolition of Rent, Interest, and Profit, which are the principal sources of income of the jurors so drawn and of the others whose names were placed in said jury-box. That said jurors so drawn are and of necessity must be by reason of their private interests hostile to and prejudiced against these defendants as Socialists and as advocates of such abolition. That there were and are many thousands of persons in said district qualified to serve on said juries who do not derive their income from Rent, Interest,

or Profit and would therefore not be rendered hostile to and  
 15 prejudiced against defendants because of their private interests, but said persons are excluded from said jury service. That to permit defendants to be indicted and tried by juries so selected and drawn will deprive them of their constitutional rights as above set forth, and be contrary to the spirit, purpose, and letter of Sec. 277 of the Judicial Code.

4. That said juries have been selected and drawn exclusively from the Eastern Division of the Northern District of Ohio, instead of from the entire District, contrary to the Sixth Amendment of the Constitution of the United States.

5. That the jury-box from which were drawn the names for said juries had not been emptied at any time within recent years nor refilled since November, 1916, many months prior to said drawings; that many juries have been drawn from said box since said November, and no evidence is obtainable of the number of qualified names in said jury-box at the time of said drawings, and in fact said box did not at the time of said drawings contain the names of 300 qualified persons as required by Judicial Code, sec. 276. That many of the names now in said box were selected and put there by one Jeremiah J. Sullivan, a former commissioner who has not held office for more than a year past. That of the persons sitting on said alleged grand jury three (3) had been so selected and their names put in said box by said Sullivan; and of the persons drawn for said petit jury three (3) had been so selected and their names put in said box by said Sullivan; and said Sullivan's term had expired prior to said drawings; and the names of said six jurors had not been selected and put in the box by either of the persons authorized to do so at the time of said drawings or at the time the order for said drawings was issued, contrary to Sec. 276 Judicial Code.

16 6. That the Marshal and his Deputy who served the writs of summons for both of said juries were not "indifferent persons" as required by Sec. 279 Judicial Code, but active adherents of the Democratic Party and political adversaries of the defendants, said Marshal being an active member of the Democratic Club of Cleveland and a former member and president of the City Council. And said Marshal did not summon nor return the entire venire of thirty (30) names as required by order of the Court and as drawn by the Clerk, but only nineteen (19) thereof.

7. That the jury-box used for said drawings was small and rectangular and incapable of being rotated so as to shake together and mingle the names; that there was in fact no attempt to draw

said names by lot, but the Clerk of the Court, in the presence of the Marshal, both of whom were political adversaries of defendants and hostile to them, selected from said box such names as said Clerk preferred for these proceedings. That said Clerk did in fact select from said box the names exclusively of adherents of the political parties adverse to that of the defendants and of persons likely to be and in fact hostile to and prejudiced against these defendants. That thereby defendants have been deprived of their constitutional right of due process of law and of trial by an impartial jury of their peers.

8. That all said jurors both inside and outside the City of Cleveland were summoned by mail; that the actual delivery of the summons in such cases was not by any officer of the Court or other qualified person, but by a person unknown, to-wit, a letter carrier.

17 That of the said grand jurors so summoned by mail and serving, seven were designated not by their christian names, but by initial only, and the summons mailed not to any street number but simply to the town or city where such person was believed to reside. Further, that of the fifteen (15) persons summoned by mail for the petit jury, nine (9) are designated not by their christian names but by initial only, and the summons mailed not to any street number but simply to the town or city where such person was believed to reside. That by reason of the neglect of all safeguards both as to the manner of serving the summons and the identity of the persons so summoned, defendants are deprived of their constitutional right of due process of law and of trial by an impartial jury of the State and District.

9. That there are nineteen (19) counties composing the Eastern Division of the Northern District of Ohio, but that the Clerk, without an order of the Court directing him to select any parts of said division, in drawing the names for said grand jury did not draw any names from seven of said counties, to-wit, Ashland, Ashtabula, Carroll, Holmes, Tuscarawas, and Trumbull, but drew six from Cuyahoga; and in the grand jury as accepted nine counties were without representative. That in the drawing of names for said petit jury the Clerk, without an order of Court, has drawn 5 from Cuyahoga, 4 from Columbiana, and 3 from Ashtabula, but has not drawn any names from 8 counties within said Division, to-wit, Crawford, Holmes, Lorain, Mahoning, Richland, Summit, Tuscarawas, and Trumbull. That this unequal distribution of jurors and failure to select names from large portions of the territory within the District and confining such drawings to only a part of said District,

18 is in violation of Sec. 277 of the Judicial Code and of the constitutional right of defendants to be tried by an impartial jury of the State and District.

10. That both the grand and petit juries were special juries ordered for a special purpose; that by Sec. 281 of the Judicial Code the Marshal was required to return them in the same manner and form as is required in such cases by the laws of Ohio, but failed so to do.

MORRIS H. WOLF,  
JOSEPH W. SHARTS.

STATE OF OHIO,

*Cuyahoga County, ss:*

Charles E. Ruthenberg, being duly sworn, says he is one of the defendants above named, and that the facts set forth in the foregoing pleading are true as he verily believes.

CHARLES E. RUTHENBERG.

Sworn to and subscribed in my presence by the said Charles E. Ruthenberg this 24th day of July, A. D., 1917.

[SEAL.]

MORRIS H. WOLF,  
*Notary Public.*19 *Answer to the Challenge to the Array of the Grand Jury and the Petit Jury.*

(Filed July 17, 1917.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES BAKER.

Answer to the Challenge to the Array of the Grand Jury and Petit Jury.

Now comes E. S. Wertz, United States Attorney for the Northern District of Ohio, counsel for the United States of America, and for answer in the above entitled cause of action denies each and every allegation of the defendants' challenge to the array of the grand jury and petit jury, and asks that the motion and relief asked for by the defendants herein in their Challenge to the Array of the Grand Jury and Petit Jury, be refused and denied.

E. S. WERTZ,  
*United States Attorney.*

Sworn to before me and subscribed in my presence this 17th day of July, 1917.

[SEAL.]

F. B. KAVANAGH,  
*Notary Public.*

20

*Motion to Quash.*

(Filed July 18, 1917.)

In the District Court of the United States for the Northern District  
of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER, Defendants.

*Motion to Quash.*

Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker, defendants, move the court to quash the indictment herein by reason of defects apparent upon the fact of the record, in this, to-wit:

1. The grand jury which found said indictment was not drawn and impanelled as required by law.

2. Said grand jury was not legally constituted, and was not a lawful grand jury.

3. Said grand jury was not a jury of the State and District as required by law but of only the Eastern Division of said District and was drawn from only a portion of the Counties within said Division, and said selection of Counties was made by the Clerk without an order of the Court indicating from what parts of the District said jury was to be drawn.

4. Said grand jury had not been drawn by name from a jury box containing at the time of said drawing the names of 300 persons; nor had the jury commissioners who were then authorized by law, placed all of the names in said jury box but a large number had — placed therein by one Jeremiah J. Sullivan, whose term of office expired prior to the order of the Court for such drawings.

5. Three of the members of said grand jury had not been selected nor their names put in said jury box by the jury commissioners having authority so to do at the time of the issuing of the  
21 order by the court and the said drawing.

6. One D. E. Grager was a member of said grand jury without his name having been drawn from said jury box and without anyone of such name having been selected or summoned.

7. Said grand jury was not summoned nor returned by the Marshal in the manner and form required by law, in this, to-wit: He summoned all by mail instead of personal summons, including James W. Butler, Cleveland Heights, Ohio; Hugh Collins, Cleveland, Ohio; Julius Renker, Cleveland, O.; Adam J. Stiefel, Cleveland, O.; Fred Witt, Cleveland, O.; and said Marshal did not summon the entire venire of thirty (30) names as ordered by the Court and



drawn by the Clerk, but selected 19 of said names, as appears by the Record. Said petit jury was not summoned by the Marshal in the manner and form required by law, in this to-wit: He has summoned all of said jury by mail, including the following, purporting to be of Cleveland, Ohio: Guy Booth, William Fleming, W. G. Morris, Herman Schlee and A. H. Weise.

8. Said grand jury had no jurisdiction of the persons of these defendants, and no jurisdiction to inquire into said alleged offense or present an indictment against these defendants therefor.

9. Said grand jury presented this indictment without defendants having been charged with the alleged offense upon oath or affirmation, and without any proper testimony having been presented to said grand jury or any witnesses sworn in a particular case.

10. Said indictment was not prepared nor presented by the grand jury in the manner required by law.

11. Endorsements not provided by law, and prejudicial to these defendants, have been placed upon the back of said indictment.

22 12. Said indictment fails to show that the events constituting the alleged offense occurred before the sitting of said grand jury, and before the finding of said indictment.

13. The indictment fails to show that the grand jurors were of the necessary qualifications, were of the body of the State and district, and sitting within the district.

14. Said indictment fails to state that said Alphons J. Schue was a citizen of the United States or a male person not an alien enemy, who has declared his intention to become a citizen, at the time said offense is alleged to have been committed.

15. Said indictment fails to state that said Proclamation had been published at the time said offense is alleged to have been committed by these defendants, or was ever published.

16. Said indictment fails to negative the possible appointments provided for in sub-division third of Sec. 1 of the Draft Act.

17. Said indictment alleges three separate offenses in one count.

18. Said indictment fails to set forth any act or manner in which these defendants did aid, abet, counsel, command, induce, and procure said Schue to commit the alleged offense, and fails entirely to set forth the nature and cause of the accusation and to apprise these defendants of what they will be required to meet, so as to enable them to plead former acquittal or conviction.

19. The indictment charges these defendants as accessories instead of principals.

20. Other reasons apparent upon an inspection of the record.

MORRIS H. WOLF,

JOSEPH W. SHARTS,

*Attorneys for Defendants.*

23      *(Plea in Abatement, Presented by Defendants for Filing,  
Leave to File Being Refused by the Court.)*

In the District Court of the United States for the Northern District  
of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER, Defendants.

Plea in Abatement.

Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker, defendants, say that the United States of America ought not further to prosecute the said indictment against them, because:

1. The names of all persons placed in the jury-box from which have been drawn the names of all the grand jurors and petit jurors herein, were selected and put therein by Jeremiah J. Sullivan, a former jury commissioner whose term expired before the juries herein were ordered drawn, by George S. May, the present jury commissioner, both of whom were and are prominent and active members of the Democratic Party, and B. C. Miller, Clerk of the Court, a member of the Republican Party; the said defendants are members and officers of the Socialist Party, which is a minor political party in said district and was and is without representation on said commission; the offense charged was, if committed by these defendants, a part of their duties and activities as said Socialist members and officers and a part of the propaganda of said Socialist Party and of said officers and members to defeat the Republican and Democratic Parties at the polls and deprive the partisans of said parties, including said commissioners and said Clerk, of political office; that the platform and principles of said Republican and Democratic  
24      Parties are opposed to the platform and principles of said Socialist Party, and said jury commissioners and Clerk were and are because of being partisans of said two first-named parties and holding office on partisan consideration and for other reasons, hostile to and prejudiced against these defendants.

2. All the names so selected and put in said jury box were names of adherents of said Republican and Democratic Parties, exclusively, and did not include the names of any adherents of the Socialist Party, to which defendants belong both as officers and members, although there were and are numerous persons in said district qualified to serve on said juries, who are members of the Socialist Party but are excluded from such service by reason of their adherence to said Socialist Party. That all the persons so selected were and are, by reason of their adherence to said Republican and Democratic

Parties and for other reasons, hostile to and prejudiced against these defendants and their party, which propaganda constitutes the alleged offense of these defendants. That to permit defendants to be indicted and tried by juries composed exclusively of their political adversaries and from which all members of their own party are systematically excluded, will deprive them of their constitutional rights to equal protection of the law, to justice, to trial by an impartial jury of their peers, and to due process of law; will be contrary to sec. 276 Judicial Code, and the grant of equal rights under Act of May 31, 1870, c. 114, sec. 16.

3. That the names so selected and placed in said jury box were taken exclusively, or almost exclusively, from the names of land-owners, property owners, and capitalists, and employers; that  
25 the names drawn and picked from said jury box for the grand and petit juries herein are names exclusively of land-owners, property-owners, capitalists, and employers. Defendants are all proletarians, that is to say landless and propertyless wage-workers, and their interests as such are adverse in many respects to those of said landlords, property-owners, capitalists, and employers; the political propaganda aforesaid constituting the alleged offense of these defendants advocates the rights of proletarians as opposed to those of landlords, property-owners, capitalists, and employers, and urges the abolishment of Rent, Interest, and Profit, which are the principal sources of income of the jurors so drawn and selected. Said jurors so drawn were and are by reason of their said private interests and sources of income hostile to and prejudiced against these defendants and said propaganda. There were and are many thousands of persons in said district qualified to serve on said juries who do not derive their income from Rent, Interest, or Profit and would therefore not be rendered hostile to and prejudiced against these defendants on account of any private interests and sources of income, but said persons are purposely excluded from said jury service. To permit defendants to be tried and indicted by juries so drawn and selected will deprive them of their constitutional rights as above set forth, and be contrary to the spirit, purpose, and letter of Sec. 277 Judicial Code.

4. Said juries have been selected and drawn from only a part of the Northern District of Ohio, instead of from the entire District.

5. The Jury box from which were drawn the names for  
26 said juries had not been emptied at any time within recent years, nor re-filled since November, 1916, many months before said drawings; many juries have been drawn since said last re-filling, and said box did not at the time of said drawings contain the names of qualified persons numbering 300, as required by law. Many of the names now in said box and at the time of said drawings were selected and put there by one Jeremiah J. Sullivan, whose authority as jury commissioner ended long before said drawings. Of the persons sitting on said grand jury three had been so selected and their names put in said box by said Sullivan; and of the persons drawn for the petit jury, three had been so selected and their names put in said box by said Sullivan; and the names of said six jurors had not been selected or put in the box by any person authorized so

to do at the time or after the order of Court for said drawings; contrary to Sec. 276 Judicial Code.

6. The jury box used for said drawings was small, rectangular, and incapable of being rotated so as to mingle the names; there was in fact no attempt to draw said names by lot, but the Clerk of the Court, said B. C. Miller, in the presence of the Marshal, one Charles W. Lapp, both of whom are political adversaries of these defendants and opposed and prejudiced against them, selected from said box such names as said Clerk preferred for these proceedings. Said clerk did in fact select from said box the names exclusively of adherents of the Republican and Democratic Parties and likely to be and in fact hostile to and prejudiced against these defendants; in violation of defendants' constitutional rights of due process of law and trial by an impartial jury of their peers.

7. Said Marshal, Charles W. Lapp, and his deputy, who served the writs of venire for both of said juries were not "indifferent persons" as required by law, but active partisans and adherents of the Democratic Party and political adversaries of these defendants, said Marshal being an active member of the Democratic Club of Cleveland, and a former member and president of the City Council.

8. Said Marshal did not summon the thirty (30) men for grand jury service as ordered by the Court and drawn by the Clerk, but selected and summoned nineteen (19) of them.

9. All persons who were summoned for said grand jury and petit jury were summoned by mail, including a number who purported to be residents of Cleveland, Ohio.

10. Of the petit jurors drawn and summoned, Guy Booth is not now a resident of the City of Cleveland as the record purports to show; nor of any other place within said District to defendants' best knowledge and belief; that Herman Schlee is not now a resident of the City of Cleveland, at 3857 West 41st Street, as the Record purports.

11. One D. E. Grager was sworn as a grand juror, no such name having been drawn from the jury box, nor any one of that name summoned; and the address of one D. E. Graver, who was summoned by mail, purports to be East Clairdon, Ohio, there being no such Post Office address in Ohio.

12. All of the grand and petit jurors summoned from addresses outside of Cleveland, O., were addressed simply by Town or City without Street Number or Post Office box, and almost all were addressed by initials instead of their proper names, so that it is practically impossible to identify them.

13. Nineteen counties compose the Eastern Division of the Northern District of Ohio, but the Clerk in drawing the 30 names for said grand jury drew six (6) from Cuyahoga County alone and none from seven (7) counties, to-wit: Ashland, Ashtabula, Carroll, Holmes, Median, Tuscarawas, and Trumbull and in the grand jury as sworn 9 counties are without representatives. In drawing said petit jury, said Clerk, without any order of Court directing such selection, drew 5 from Cuyahoga, 4 from Columbiana,

and 3 from Ashtabula, but none from 8 counties, in violation of Sec. 277 Judicial Code and of the constitutional right of defendants to be tried by an impartial jury of the State and District.

14. Both said juries were special juries ordered for a special purpose, to-wit, the investigation and trial of cases of violation of the Draft Act; that by Sec. 281 of the Judicial Code the Marshal was required to make return of them in the same manner and form as is required in such cases by the Laws of Ohio; that by the laws of Ohio the return of the Marshal in such cases must show personal summons, not summons by mail; but that the Marshal failed so to do.

15. Said grand jury presented the indictment without these defendants having been charged with the alleged offense upon oath or affirmation, and without any testimony having been presented to said grand jury of a nature proper for such grand jury to receive, or any witnesses sworn in a particular case.

16. Said grand jurors were not of the necessary qualifications, were not of the body of the State and District, nor properly constituted a grand jury.

And these allegations the said defendants are ready to verify wherefore they pray judgment, and that by the Court they may be dismissed and discharged from the premises in the said indictment specified.

MORRIS H. WOLF,  
JOSEPH W. SHARTS

*Attorneys for Defendants*

STATE OF OHIO,  
*Cuyahoga County, ss.*

Charles E. Ruthenberg being duly sworn, says that he is one of the above named defendants and that the facts set forth in the foregoing pleading are true as he verily believes.

CHARLES E. RUTHENBERG.

Sworn to and subscribed before me by the said Charles E. Ruthenberg this 17th day of July, A. D. 1917.

[SEAL.]

MORRIS H. WOLF,  
*Notary Public.*

30

*Demurrer.*

(Filed July 18, 1917.)

In the District Court of the United States for the Northern District  
of Ohio, Eastern Division.

No. 3873.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER, Defendants.

*Demurrer.*

Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker,  
defendants, demur to the indictment herein for the reasons:

(1.) that the facts set forth therein do not constitute an offense  
against the laws of The United States;

(2.) that the indictment charges these defendants with being ac-  
cessories to a misdemeanor;

(3.) that it does not allege the events or acts as occurring prior  
to the finding of the indictment;

(4.) that it does not allege the indictment to have been presented  
by a grand jury "duly" empaneled and sworn, and in, of, and for  
the district;

(5.) that the said Act of May 18, 1917, entitled: "An Act to Au-  
thorize the president to increase temporarily the military establish-  
ment of The United States", and the "Proclamation" of same date,  
are unconstitutional on the following grounds:

(a) Said act creates Involuntary Servitude in violation of Amend-  
ment XIII of the United States Constitution;

(b) Said Act deprives men of their liberty without due process of  
law, in violation of Amendment V of the United States Constitu-  
tion;

31 (c) The Said Act deprives men of their right of trial by  
jury in violation of Amendment VI of the United States  
Constitution;

(d) Said Act violates Article I Section 8 Clause 15 of the United  
States Constitution;

(e) Said Act violates Article I Section 8 Clause 16 of the United  
States Constitution;

(f) Said Act in Section IV thereof violates Article III Section I  
and Article I Section 8 Clause 9 of the United States Constitution;

(g) Said Act violates Article II Section 2 of the United States  
Constitution;

(h) Said Act violates Article X of the Amendments of the  
United States Constitution;

(i) Said Act in Section 6 thereof violates the fundamental principle of justice and liberty embodied in Preamble to the United States Constitution.

JOSEPH W. SHARTS,  
*Attorneys for Defendants.*

32 *Hearing on Challenge to Array Concluded and Overruled; Defendants' Motion to Quash Heard and Overruled; Leave to Defendants to File Plea in Abatement Refused by the Court; Defendants' Demurrer Heard and Overruled.*

(Entered July 18, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

VS.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED E. WAGENKNECHT, and CHARLES BAKER.

This day came again the parties at the bar of Court whereupon hearing on the challenge of defendants, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker to the array of Grand and Petit Jurors was resumed and arguments of counsel being concluded, the Court after due consideration overruled the said challenge, to which ruling and order of the Court the said defendants then and there excepted. Whereupon the said defendants Charles E. Ruthenberg, Alfred E. Wagenknecht and Charles Baker having filed their motion to quash the Indictment herein, said motion was duly heard and overruled by the Court, to which ruling the said defendants then and there excepted; thereupon said defendants Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker moved the Court for leave to file a plea in abatement, which request was objected to by the United States Attorney, and refused by the Court, to which ruling and order the said defendants then and there excepted; and the said defendants having by leave of Court filed their demurrer to the Indictment herein, the said demurrer was duly heard by the Court and overruled, to which ruling the said defendants then and there excepted. Whereupon the defendants Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker moved the Court for a separate trial, which motion was duly overruled by the

33 Court, to which ruling and order the said defendants having excepted, they were each rearraigned, and each waiving the reading of the Indictment each for plea thereto say they are not guilty in manner and form as they are each by the Indictment therein and thereby charged, and the impanelment of the jury having begun but not concluded further proceedings were continued until tomorrow morning at 9 o'clock.



34

*Jurors Empaneled and Sworn.*

(Entered July 19, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER.

This day came again the United States Attorney on behalf of the United States and also came the defendants Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, accompanied by counsel at the bar of Court, the selection of a Jury being resumed, there came as jurors, Albert H. Currie, John Spaller, Joseph Whitaker, Charles Wood, J. M. Brewer, A. H. Scoville, John H. Wysson, John T. Gulfoyle, R. S. Torbet, Edwin Thomas, R. B. Richards and W. G. Morris, whereupon said jurors being duly empaneled and sworn the trial of this cause commenced. And the said jury having heard all the testimony in chief on behalf of the United States, and the hour of adjournment having arrived, the further proceedings were continued until tomorrow morning at 9:30 o'clock.

35

*Trial in Progress.*

(Entered July 20, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER.

This day came again the United States Attorney on behalf of the United States and also came the defendants Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker accompanied by counsel, and the jury heretofore empanelled and sworn at the bar of Court and the trial of this cause proceeded. And the said jury having heard all the testimony in chief adduced on behalf of the United States, whereupon said defendants moved the Court to arrest the testimony from the Jury and direct a verdict on behalf of the defendants, which motion was argued by counsel and overruled by the Court, to which ruling and order of the Court the defendants then and there excepted. Whereupon testimony on behalf of defendants was begun

and concluded, further proceedings were continued until tomorrow morning at 9:00 o'clock.

36 *Trial Concluded. Jury Charged. Verdict Guilty as to Defendants Ruthenberg, Wagenknecht, and Baker.*

(Entered July 21, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES BAKER.

This day came again the United States Attorney on behalf of the United States and also came the defendants Charles Ruthenberg, Alfred Wagenknecht and Charles Baker, and the Jury heretofore empaneled and sworn, whereupon the trial of this cause proceeded. And the said Jury having heard all the testimony and arguments of counsel and charge of the Court retired to their room in charge of a sworn officer of this Court to deliberate upon their verdict. And now comes said jury into open Court with their verdict in writing, signed by their foreman which verdict reads and *in is* the words and figures following to wit:

"United States of America, Northern District of Ohio, ss April Term, A. D. 1917. The United States, Plaintiff, vs. Alphons J. Schue, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, Defendants. In the District Court of the United States, No. 3873.

*Verdict.*

We, the Jury in this case, being duly impanelled and sworn, do find the Defendants Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker Guilty as they are each by the Indictment therein and thereby charged. Joseph Wittaker, Foreman."

which verdict was by the Clerk of this Court read in the hearing of said jury, when to which they gave their assent.

37 Whereupon the United States Attorney having moved the Court for sentence the counsel for said defendants gave notice in open Court of his intention to file a motion for a new trial and a motion for arrest of judgment, which motions were duly filed and it is now further ordered that further proceedings herein be continued to next Wednesday the 25th day of July, A. D. 1917, and that the recognizance heretofore entered into by said defendants for their appearance here in this Court to answer unto the Indictment herein remains in full force and effect until said 25th day of July, A. D. 1917.

38

*Motion for a New Trial.*

(Filed July 21, 1917.)

In the District Court of the United States for the Northern District  
of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

C. E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES BAKER,  
Defendants.

*Motion for a New Trial.*

Now come Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, defendants, by Morris H. Wolf and Joseph W. Sharts, their attorneys and each for himself and jointly move the Court to set aside the verdict rendered herein and to grant a new trial, and for reasons therefor, show to the Court the following:

(a) The Court erred in not requiring the prosecution to file exceptions for an answer or a demurrer to defendants' challenge to the grand and petit jury panels and array; and in refusing to allow defendants to present evidence to substantiate allegations as to the first, second, third, sixth and 7th grounds thereof; and in overruling said challenge.

(b) The Court erred in overruling defendants' motion to quash the indictment and each count thereof.

(c) The Court erred in overruling defendants' "plea in abatement" and refusing to permit same to be filed, and each count thereof.

(d) The Court erred in overruling defendants' demurrer to the indictment and each count thereof.

(e) The verdict is contrary to the law of the case.

(f) The verdict is not supported by the evidence in the case.

39 (g) The Court, upon the trial of the case, admitted incompetent evidence offered by the United States.

(h) The Court, upon the trial of the case, excluded competent evidence offered by the defendants.

(i) The Court erred in refusing to direct a verdict of "not guilty" for each and all of the defendants at the close *for* the government's evidence.

(j) The Court erred in not directing a verdict of "not guilty" for each and all of the defendants at the close of all the evidence.

(k) Newly discovered evidence which defendants were unable to obtain and produce at the time of the trial, is shown by the affidavits filed herewith.

(l) The Court erred in allowing the jury to separate for the lunch hour and to leave the confines of the Court and go upon the streets, after the arguments in the case but before the charge, at a time when great public excitement and political passion reigned, and when it was practically impossible for a juror to be unaffected by the state of the public mind, said time being the day when the draft numbers were being published, and great enlistment activities were prevailing in the immediate vicinity of the Court House.

(m) The Court erred in permitting the attorneys for the prosecution to appeal to the political passions and prejudices of the jurors in their arguments.

(n) Because of which said errors in the record herein, no lawful judgment can be rendered by the Court upon the record in this cause.

MORRIS H. WOLF,  
JOSEPH W. SHARTS,  
*Attorneys for Defendants.*

40

*Affidavit.*

(Filed July 21, 1917.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES BAKER, Defendants.

*Affidavit.*

STATE OF OHIO,

*County of Cuyahoga, ss:*

Before me, a Notary Public, in and for said County, personally appeared Tom Clifford, who being by me duly sworn, says that he is a resident of the City of Cleveland, and a member of the Socialist Party of the City of Cleveland.

Affiant further says that, while going through some files on the 23rd day of July, 1917, in the Socialist Hall on the corner of Sachett Avenue and West 31st Street, which is a hall of one of the branches of the Socialist Party of the City of Cleveland, he, accidentally, discovered, in one of the drawers in a desk at the said hall, an application for membership in the Socialist Party signed by Alphons Schue, which application card has a mark "6th" indicating that it had been presented to the branch on the 6th day of May, 1917, which card is hereby attached.

Affiant further says that he has no means of knowing and did not know, prior to the said finding of the card, that this card or any such card was had or was in any of the files in the said branch of the Socialist Party.

TOM CLIFFORD.

Sworn to before me and subscribed in my presence, by the said Tom Clifford, this 23rd day of July, 1917.

[SEAL.]

MORRIS H. WOLF,  
*Notary Public.*

41 Paid 25c.

6th.

### Application for Membership in the Socialist Party.

6. "I, the undersigned, recognizing the class struggle between the capitalist class and the working class, and the necessity of the working class organizing itself into a political party for the purpose of obtaining collective ownership and democratic administration and operation of the collectively used and socially necessary means of production and distribution, hereby apply for membership in the Socialist Party. I have no relations (as member or supporter) with any other political party. I am opposed to all political organizations that support and perpetuate the present capitalist profit system, and I am opposed to any form of trading or fusing with any such organizations to prolong that system. In all my political actions while a member of the Socialist Party I agree to be guided by the constitution and platform of that party."

Name—Alphons Schue.

Occupation—Machinist.

If a member of a labor organization give name and number.

Street Address, 2208 Elvira St. Ward, 4. City, —, State, —,  
County, Cuyahoga. Proposed by Carl Perawa. Age, 22. Date,  
—, 191—. Citizen (yes or no), Yes.

(Endorsement:)

This applicant was elected a member of Branch —, Local —,  
Date —, 191—. —, —, Sec'y. Street Address —,  
12 Recorded by City Central Com. —, 191— or County  
Central Com. —, 191—. —, —, Sec'y. Street Ad-  
dress —, Western Printing & Litho. Co., Racine, Wis.

43

*Motion in Arrest of Judgment.*

(Filed July 21, 1917.)

In the District Court of the United States for the Northern District  
of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES  
BAKER, Defendants.

*Motion in Arrest of Judgment.*

Now, after verdict against the defendants, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, and before sentence, come the said defendants in their own proper persons and by Morris H. Wolf and Joseph W. Sharts, their attorneys, and each for himself and jointly move the Court herein to arrest judgment herein and not pronounce the same, for the following reasons, to-wit:

(a) The Court erred in not requiring the prosecution to file exceptions or an answer or a demurrer to defendants' challenge to the grand and petit jury panels and array; and in refusing to allow defendants to present evidence to substantiate allegations as to the first, second, third, sixth and seventh grounds thereof; and in overruling said challenge.

(b) The Court erred in overruling defendants' motion to quash the indictment and each count thereof.

(c) The Court erred in overruling defendants' "plea in abatement" and refusing to permit same to be filed, and each count thereof.

(d) The Court erred in overruling defendants' demurrer to the indictment and each count thereof.

(e) The verdict is contrary to the law of the case.

44 (f) The verdict is not supported by the evidence in the case.

(g) The Court, upon the trial of the case, admitted incompetent evidence offered by the United States.

(h) The Court, upon the trial of the case, excluded competent evidence offered by the defendants.

(i) The Court erred in refusing to direct a verdict of "not guilty" for each and all of the defendants at the close of the government's evidence.

(j) The Court erred in not directing a verdict of "not guilty" for each and all of the defendants at the close of all the evidence.

(k) Newly discovered evidence which defendants were unable to

obtain and produce at the time of the trial, is shown by the affidavits filed herewith.

(l) The Court erred in allowing the jury to separate for the lunch hour and to leave the confines of the Court and go upon the streets, after the arguments in the case but before the charge, at a time when great public excitement and political passions reigned, and when it was practically impossible for a juror to be unaffected by the state of the public mind, said time being the day when the draft numbers were being published, and great enlistment activities were prevailing in the immediate vicinity of the Court House.

(m) The Court erred in permitting the attorneys for the prosecution to appeal to the political passions and prejudices of the jurors in their arguments.

(n) The Court erred in overruling the motion for a new trial.

Because of which said errors in the record herein, no lawful judgment can be rendered by the Court upon the record in this cause.

MORRIS H. WOLF,

JOSEPH W. SHARTS,

*Attorneys for Defendants.*

45      *Motions for New Trial and for Arrest of Judgment Overruled;  
Order of Sentence and Order to Enter into Recognizances.*

(Entered July 25, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

VS.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER.

This day came the United States Attorney on behalf of the United States and also came the defendants, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker accompanied by counsel at the bar of Court, and thereupon came on to be heard the motion of said defendants for a new trial, and motion for arrest of judgment which motions after due consideration were each separately overruled by the Court, to which rulings and orders of the Court the said defendants then and there excepted, and the Court now coming to the imposition of sentence each defendant being inquired of whether he had anything to say before sentence was pronounced and the Court receiving the replies of each of the defendants it is ordered that the defendants, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, be each confined in the Stark County Workhouse at Canton, Ohio, for a period of One (1) Year, from and after the 28th day of July A. D. 1917, to which sentence and order of the Court each of said defendants then and there excepted and gave notice in open Court of their intention to appeal



this cause and filed their petition for a Writ of Error to The Supreme Court of the United States which petition was duly allowed by the Court and said defendants were allowed fifty (50) days within which to prepare and file their Bill of Exceptions, and leave is also granted said defendants to file an Amended Assignment of Errors by the 1st day of August, A. D. 1917.

46 Whereupon on motion of counsel for said defendants, it is ordered that each of said defendants, enter into a recognizance in the sum of Five Thousand (\$5,000.00) Dollars, with sureties to be approved by the Clerk of this Court for their appearance from day to day thereafter pending a hearing upon a Writ of Error to the Supreme Court of the United States and shall surrender themselves to the United States Marshal, and that they shall then and there be present to abide the order and judgment of this Court or the said The Supreme Court of the United States and not depart the Court without leave thereof. Whereupon came the defendant Charles E. Ruthenberg as principal, and Abraham Kerman and Wm. Ruthenberg, as sureties and entered into the required recognizance and also came the defendant Alfred Wagenknecht as principal and Marguerite Prevey and Ernest Bodecker as sureties and entered into the required recognizance and also came the defendant Charles Baker as principal, and A. E. Herig and Otto Greenberg as sureties and entered into the required recognizance.

47 (*Order Approving Narrative Form of Testimony.*)

(Entered August 21, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

vs.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES BAKER.

This day the bill of exceptions in this case was presented to the court, the same having been delivered to the clerk by the excepting party in accordance with Rule 38 of the General Rules of this court, and the adverse counsel having been notified of such delivery and no objections thereto having been filed, the same is allowed and signed, and ordered to be filed in this case.

*Bill of Exceptions.*

(Filed August 21, 1917.)

In the District Court of the United States, Northern District of Ohio,  
Eastern Division.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGEN-  
KNECHT, and CHARLES BAKER, Defendants.

*Bill of Exceptions.*

Be it remembered that, on the trial of the above entitled case, in the District Court of the United States for the Northern District of Ohio, Eastern Division, at the April, 1917, term thereof, before Hon. D. C. Westenhaver, Judge of said court, and a jury duly empaneled and sworn, the following proceedings were had:

*Appearances.*

For the Government, Mr. E. S. Wertz, District Attorney, and Mr. Francis B. Kavanagh, and Mr. Joseph L. Breitenstein, Assistant United States Attorneys.

For the Defendants: Mr. Joseph W. Sharts and Mr. Morris H. Wolf.

July 16, 1917—3:00 p. m.

The counsel for defendants presented to the Court a challenge to the array of the Grand Jury and petit jury.

Mr. Wertz: I presume, if the Court please, it will be necessary, inasmuch as that motion is in the form of an affidavit, to offer some testimony.

The Court: My understanding of a challenge is that it is a matter to be tried by the Court and will, of course, be tried upon such evidence as is presented. Naturally, the person filing the motion or challenge would bring forward such evidence, if any, as they saw fit to bring to the attention of the Court in addition to the affidavit itself, and then the Government will bring forward its testimony. That, I understand, is the practice, Mr. Sharts.

Mr. Sharts: If your Honor please, there has been nothing filed by the District Attorney's office, either in the way of a demurrer or as an exception or an answer, and for that reason we have been unable to understand that an issue had been made up.

The Court: No issues are required. No answer is required. No exception is required. They may object to the sufficiency of the

affidavit, if they wish to submit it in that way, instead of to present such evidence as they may see fit to present.

Mr. Sharts: If your Honor will permit me, I will take an exception. Enter an exception to the ruling of the Court.

The Court: An exception to what?

Mr. Sharts: An exception to the ruling of the Court that neither an answer or exceptions or a demurrer are required before testimony.

50 Thereupon the defendants, to maintain the issues upon their part, on the challenge to the array, called as a witness in their behalf B. C. MILLER, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is B. C. Miller. I am Clerk of the United States District Court of the Northern District of Ohio and have occupied that position since February 1, 1912. During my term of office the Jury Commissioners who have acted in conjunction with me are Jeremiah J. Sullivan, of Cleveland, and George S. May, of Napoleon, Henry County, Ohio. On August 4th, 1916 the resignation of Jeremiah J. Sullivan as Jury Commissioner for the Northern District of Ohio was accepted and George S. May was appointed as Jury Commissioner in his stead. I understand that Mr. Sullivan now resides in Cleveland, Ohio. Mr. May resides in the Western Division of this Court. Mr. May has performed the duties of Jury Commissioner for the Eastern Division since the time of his appointment on August 1, 1916, which was exactly contemporaneous with the resignation of Mr. Sullivan.

I think the last time Mr. Sullivan placed names in the jury box was May 19, 1915. At that time he placed 205 names in the box and I placed 205 names in the box. Since that time, 400 were placed in the box on the 15th of November, 1916, 200 by Mr. May, the Jury Commissioner, and 200 by myself. Since that time neither

Mr. May nor myself has placed any names in the box. Since  
51 November, 1916, there has been 273 names drawn from the box. From the time the last names were placed in the box by Mr. Sullivan and myself down to the time of its refilling by Mr. May and myself 392 names were drawn from the box, making a total amount of names drawn from the box since Mr. Sullivan's last placing of names therein of 665. At the time Mr. Sullivan last placed names in the box there were 324 names therein.

Q. Now, what were the political principles of Mr. Sullivan?

Mr. Wertz: I object.

The Court: I think that I will sustain the objection to that question, but permit you to put the inquiry in the language of the Statute, as to whether or not he was a member of the dominant political party of politics opposite to that of the Clerk. I think that is the

extent of the legitimate inquiry. I do not believe it is permissible to prove whether he was prohibitionist or republican or democrat, or of any other political faith beyond that it was a faith opposite to that of the Clerk.

Mr. Sharts: Enter an exception to the ruling of the Court.

Q. State, Mr. Miller, if Mr. Sullivan was a member of a political party other than your own at the time that he was Jury Commissioner?

A. He was.

Q. State whether that political party was a principal political party in the District?

A. It was.

52 Q. Can you give the names of the principal political parties in the District?

Mr. Wertz: I object.

The Court: The objection will be sustained.

Mr. Sharts: Exception.

Q. What is your political affiliation?

Mr. Wertz: I object.

The Court: Objection will be sustained.

Mr. Sharts: Enter an exception.

Q. State whether or not Mr. Sullivan was a well known member of a political party opposed to your own?

A. He was.

Q. Can you state how well known?

The Court: Do you think that that is susceptible of an answer, Mr. Sharts?

Mr. Sharts: I would suppose we were entitled to some concrete information on the subject.

The Court: No. I will of my own motion sustain an objection to that.

(Exception by defendants.)

Q. Will you state, Mr. Miller, what were the political affiliations of Mr. May?

Mr. Wertz: I object.

The Court: The objection will be sustained, unless you make your question in the form I indicated a moment ago.

Mr. Sharts: Exception.

Q. State whether or not Mr. May was a member of the principal political party in the District opposing that to which you yourself belonged?

53 A. He is.

Q. State whether or not he was a member of the same political party with Mr. Sullivan?

Mr. Wertz: I object.

The Court: The objection will be sustained.

Mr. Sharts: Enter an exception, for the reason that we expect to show that both Mr. Sullivan and Mr. May were members of the Democratic party and that Mr. Miller is a member of the Republican party, and that the Socialist party is without representation on the jury board. This is the ground of exception in the previous questions. I did not know the political affiliations of the men whose names Mr. Sullivan was putting in. I did not know whether or not Mr. May, in his selection of names, was guided by any party affiliations, except that I called his attention to the statute at the time he was appointed, particularly that feature of it. In selecting names myself, I did not allow myself to be guided by the party affiliations of any of the persons that I selected. I do not know that there are any names of socialists in the jury box placed there by myself. I do not know that there are any names of republicans or democrats placed there. As to the names placed in the box by either Mr. Sullivan or Mr. May, I do not know whether they are republicans or democrats.

Q. Do you know whether or not the names of any that are in the box are the names of republicans or the names of democrats?

Mr. Wertz: I object.

54 The Court: I will sustain the objection to that question.

Mr. Sharts: Enter the exception for the same reasons as above.

Q. State, Mr. Miller, how you arrived at your selection of names, what sources of information you used?

Mr. Wertz: I object.

The Court: I do not think that is a material line of inquiry, Mr. Sharts.

Mr. Sharts: Enter an exception, because we expect to show by this witness that he has made use of the files of the Board of Elections and has drawn therefrom names of partisans of the republican and democratic parties and excluded the names of adherents of the socialist party.

The Court: In view of that tender of proof, I will reverse the ruling and permit the question to be answered.

A. I obtained the names by writing to the Common Pleas Judges of this Division for various Counties, and asking them to send me a list of men in their counties qualified to serve as jurors.

Q. Were the Common Pleas Judges to whom you sent this request members of any political party?

Mr. Wertz: I object.

The Court: I sustain the objection to that question.

Mr. Sharts: Enter an exception, because we expect to show that the Common Pleas judges to whom this witness applied for names were all of them members of the republican and democratic parties and not of the socialist party.

Other names that I used were those of men that I knew personally, a very few, which I selected and put in, and occasionally some name will be suggested to me by some one and I place that name in a drawer and some of those I select and some of them I reject when I come to make up my list.

Q. Do you know in what manner the list of names that were sent to you from the Common Pleas judges, as you have described, had been selected?

A. Not in detail.

Mr. Wertz: I object to the question. It would be hearsay.

The Court: I sustain the objection to that question.

Mr. Sharts: Enter an exception.

Q. Did you, in asking the Common Pleas judges for these lists of names, indicate in any way how they were to be selected or exclude any particular method of selection?

A. I think not, except that they should be "qualified."

Q. What did you mean by the word "qualified"?

A. Whatever the Statute meant by it.

Q. State, if you know, in what way Mr. Sullivan secured his names for the jury wheel, or from what source?

A. I do not know positively.

Q. State, if you know, in what way Mr. May secured his names for the jury box?

A. I do not know that.

53 Q. State if you are personally aware, or if you have by investigation become aware of the property qualifications, of the standing in the financial and commercial world, of any of the men whose names have been placed in the jury box by you?

Mr. Wertz: I object.

The Court: The objection to that will be sustained. I do not understand that the law under which we are operating disqualifies any man from being placed in the jury box or to serve on the jury because he has or has not property, and, therefore, the question is immaterial.

Mr. Sharts: Enter an exception on the ground that by this question defendants expect to establish the allegations of the third ground of challenge to the jury array.

Q. State whether or not the names placed in the jury box are the names of land owners, property owners, and capitalists?

Mr. Wertz: Objection.

The Court: The same ruling on that.

Mr. Sharts: Enter an exception on the same ground.

These jurors whose names have been selected are from the Eastern Division and every county in the Eastern Division. I cannot tell you whether every county is represented in the jury box, because a number of names have been drawn out and I cannot tell whether all of the names from one county have been drawn out that have been

put in and the list of names from that county has been exhausted, or whether still some of them are there.

57 I keep a card index record in my office of the list of names of those who are put in the jury box. It is a public record. I think in every instance on that card index I have indicated the Commissioner or myself who placed the name in the jury box. Before the last drawing of jurors for these panels, I think that there were some names in the jury box, as indicated by my card index, which were placed there by Mr. Sullivan. As to whether or not there are any now, I cannot say positively.

Q. I will ask you to go through your card index, if you can, and give us a rough estimate of the proportion of names that are now in the jury box that were placed there by Mr. Sullivan?

A. I can do so.

The Court: I will sustain an objection to that part of it. I think when I have permitted you to establish that there were names there, I have given you the benefit of all that you are entitled to.

Mr. Sharts: Just enter an exception, on the ground that we expect to show by the proportion of names that a considerable number of the names in the jury box now and at the time of the drawing and the order of the Court were names placed there by Mr. Sullivan and that such names are disqualified and that the remaining names would not constitute the required 300.

Mr. Wertz: You mean those names were placed there by Mr. Sullivan at the time as Jury Commissioner, Mr. Sharts?

Mr. Sharts: Yes.

At the time of the drawing of the Grand Jury which brought in the indictment in this case, there were four Grand Jurors drawn whose names were placed in the box by Mr. Sullivan. At the time of the drawing of the Petit Jury for this term which is to try this case, there were three of the twenty placed in the box by Mr. Sullivan.

Q. State whether or not the names of the Grand Jurors are representative of all the counties within the Eastern Division of the Northern District of Ohio?

The Court: Are representative?

Mr. Sharts: I mean whether those names are drawn as residents of all of the counties of the Eastern Division.

Mr. Wertz: You mean "drawn"?

Mr. Sharts: Drawn.

Mr. Wertz: I object.

The Court: I will sustain the objection to that. I have a clear conviction that it is not necessary in drawing a Grand Jury that there should be brought out from the box someone from every county in the District. The Clerk could not do that honestly. It would be necessary for him to select the jurymen in order to produce a result of that sort, so that I will sustain the objection.

Mr. Sharts: Enter an exception on the ground that we expect to

show by this answer that there was drawn from the jury box  
59 a set of names selected by the Clerk from some of the counties  
in the District and Division and not from the others, and that  
there was no order by the Court directing him to make such a  
selection.

The Court: Now, Mr. Sharts, you are making an offer of proof  
there that the Court probably does not understand and perhaps you  
did not intend to put it in that way. Do I understand that you are  
making an offer of proof to show that the Clerk in drawing those  
names undertook to select names rather than to draw names?

Mr. Sharts: If Your Honor please, we have stated in our seventh  
objection or challenge that the jury box used for said drawing was  
small and rectangular, and incapable of being rotated so as to shake  
together and mingle the names, that there was in fact no attempt  
to draw said names by lot, that both the Clerk of Court in the presence  
of the Marshal, both of whom were political adversaries of the de-  
fendants and hostile to them, selected from said box such names as  
said Clerk preferred for these proceedings.

The Court: I want merely to say, Mr. Sharts, that your offer of  
proof there is an offer of proof entirely outside of any question which  
the Court ruled upon and is not warranted either by the question  
or the ruling of the Court.

Mr. Wertz: Perhaps I had better withdraw the objection and let  
him answer it.

The Court: No, we will take care of it.

60 Q. I will ask the question, then, in this form, or, rather,  
I will draw the information that I desire in this form: State  
the character of the jury box that is used for these drawings? About  
what size and shape is it?

A. It is a box, I would estimate, about ten inches long, maybe  
twelve inches, about six inches deep and perhaps six inches wide.

As to whether I have rotated the jury box, I have turned it over  
and from side to side, shaken it up and turned it around, upside  
down, on the side, the other side, and end to end.

The form in which the names are placed in the box is on small  
slips of cardboard, probably three inches long and an inch and a half  
wide.

In the drawing of the grand jury in this case I did rotate the box,  
in the presence of the Marshal and any one that happened to be  
in my main office at the time of the drawing. I did not particularly  
notice anyone there at the time.

I rotated the box when the names were drawn for petit jury  
service in this term, in that I shook it and turned it over.

The way this jury box is opened for the purpose of drawing the  
names out is, it is unlocked and the lid is raised on hinges. Then  
there is an inside cover under this lid with a hole just about large  
enough for my hand to get in, a circular hole in this inside cover,  
about three and a half or four inches in diameter. When I drew  
these names I put my hand in that hole and drew out the names one  
at a time. The only selection I made was that I felt for a



61 card, and when I felt that I had one card I pulled it out. To my recollection I did not put any names back in the box. My recollection is that I drew 30 names for grand jury service for the special term that brought in the indictment in this case. I drew 20 names for petit jury service on the last drawing.

62 The marshal of this court is Charles W. Lapp.  
Q. And of what political affiliation?

The Court: I will sustain an objection to that.

Mr. Sharts: Enter an exception on the ground that by the sixth challenge we have charged that the marshal and his deputy who served the writs of venire for both of said juries were not "indifferent persons" but active adherents of the democratic party and political adversaries of the defendants, said marshal being an active member of the Democratic Club of Cleveland and a former member and president of the City Council, and we expect to show by this line of questions that he was a political adversary of these defendants at the time he served the writs of venire.

I have the return of the marshal on the venire of the grand jury. It reads as follows:

"THE UNITED STATES OF AMERICA,

*Northern District of Ohio, ss:*

Received this writ at Cleveland, Ohio, June 16, 1917, and on the same day, a copy was mailed to each of the following, who personally acknowledged summons in writing:

1. A. H. Babcock, Lorain, O.
2. E. K. Bebb, Wayland, Ohio.
3. Henry Brunner, West Park, O.
4. James W. Butler, Cleveland Heights, O.
5. Hugh Collins, Cleveland, O.
6. George F. Copeland, Millport, O.
7. Charles Dreiblebi, West Salem, O.
8. D. E. Graver, East Claridon, O.
9. Charles H. Krauter, Youngstown, O.
- 63 10. John E. Main, Perry, O.
11. James Miera, Everett, O.
12. W. W. McIntosh, Akron, O.
13. Julius Renker, Cleveland, O.
14. C. K. Russell, Painesville, O.
15. Adam J. Stiefel, Cleveland, O.
16. Emmet F. Taggart, Akron, O.
17. W. H. Thompson, Burbank, O.
18. J. B. Trall, Madison, O.
19. Fred Witt, Cleveland, O.

The following named were excused by order of the Court:

1. J. H. Petry, Galion, O.
2. Harry J. Griffin, Copley, O.
3. E. P. Johnson, Middlefield, O."

Then there is one name that has a pencil mark over it—

- 4. Charles A. Miner, Cleveland, O.
- 5. J. H. Petry, Galion, O.
- 6. S. W. Warner, Wellington, O.
- 7. Reed Wilcoxsen, Lisbon, O.
- 8. S. P. Wiseman, Canton, O.

The following named could not be found in my district:

- 1. Philip Kennedy, Cleveland, O.
- 2. Rudolph Liebner, Cleveland, O.
- 3. P. E. Wigton, Lucas, Ohio.

(Signed)

CHAS. W. LAY,

*U. S. Marshal.*

By E. E. LAY, *Deputy.*

I have not as yet the return of the marshal on the petit jury. The venire for the petit jury is customarily issued and delivered to the marshal.

At the time I made the drawing of the names of this venire, I had no order of court directing me to select any certain counties, 64 other than those in the Eastern Division. There is a rule or order to that effect. There is an order or rule of court, rule 30, providing that the drawing shall be done by the Clerk in the presence of the marshal.

Q. I will ask you, in the drawing of the names for the grand jury, how many counties within the Division are not represented by any person residing therein?

Mr. Wertz: I object.

The Court: I will sustain the objection to that because I have a well-defined conviction that the fact that some counties were not represented in the drawing is not a valid objection.

Mr. Sharts: I would just like to call your Honor's attention to the fact that the Judicial Code does not provide for drawing by lot; that is not the manner indicated by the Code. Enter an exception on the ground that defendants expect to show by the answer that there were seven counties not represented by any names in that drawing.

Q. I will repeat the same question with regard to the petit jury, for the purpose of the record. How many counties were unrepresented in the drawing for the petit jury?

Mr. Wertz: I object.

The Court: I sustain the objection.

Mr. Sharts: Exception on the same grounds as before—that we expect to show by the answer of the Clerk that there were eight counties from which no names had been drawn within the Division.

Q. I will ask the Clerk to state how many names were drawn from Cuyahoga County.

65 Mr. Wertz: I object.

The Court: I will sustain the objection.

Mr. Sharts: Enter an exception on the ground that we expect to show that there were five drawn from Cuyahoga County.

Q. How many were drawn from Columbiana County?

Mr. Wertz: I object.

The Court: I sustain the objection.

Mr. Sharts: Exception on the ground that we expect to show there were four drawn from Columbiana County.

Q. How many were drawn from Ashtabula County?

Mr. Wertz: I object.

The Court: The same ruling.

Mr. Sharts: Enter an exception on the ground that we expect to show there were three drawn from Ashtabula County.

Cross-examination.

By Mr. Wertz:

At the time the grand jury was drawn which returned the indictments among which was the indictment against the defendants, there were 519 names in the jury box. At the time the petit jury was drawn which is now sitting in this court, at the last drawing, there were 489 names in the jury box. After the petit jury was drawn which is in this court at this time there were 469 names remaining in the jury box. At the time these names were placed in the box and at the different times to which I have testified, the names  
66 placed therein by me were from all counties in the District. I did not check up the names of the other commissioners as to that, and do not know anything about that.

The drawing of both the grand and petit juries under consideration here was public. The present jury box has been in use in the District Court, to my personal knowledge, since the organization of the court as it is now, January 1, 1912. As Clerk of the District Court, going into office January 1, 1912, I received it as a part of the property of the Government from my predecessor.

Redirect examination.

By Mr. Sharts:

I cannot state what number of names of the 519 names in the jury box at the time of the drawing of the grand jury were placed in the box by Mr. Sullivan. I cannot state what number of the 489 names in the jury box at the time the petit jury was drawn were placed in it by Mr. Sullivan.

There was no public notice of the drawing. I do not recall that there was any particular notice except the order of court. The order of court is dated June 15, 1917, and, to my personal knowledge, was signed by the court about half past four on the evening of the 15th

for the drawing of the grand jury, and the jury was drawn on the morning of the 16th. The order to draw the petit jury was signed July 2, 1917, and the jury was drawn on the 3rd of July. I have no personal recollection as to whether it was drawn in the morning.

There was nothing in the order of the court in either instance  
67 which directed at what time the jury was to be drawn. I notified the marshal of the orders of the court and as soon as he came in the drawing was made. In the one instance in which I spoke of it as being made the next day, I went to the marshal's office and he had gone home for the day. I notified him of the drawing that he was to attend for that purpose.

The last time I recall that there was an emptying out of the jury box and the replenishing of the names was on February 4, 1912, when there was an order entered by Judge Day directing that the names then in the jury box be withdrawn and that the Clerk and the Jury Commissioners deposit in said box, as provided by law, 400 names of residents of said Division for jury service. There has been none other since.

Mr. Sharts: Now, if your Honor please, I would like to call your attention, before I dismiss this witness, to the fact that we have here the Clerk of the Board of Elections with a card index and we expect to place him on the stand and we want to establish by a comparison between the card index of the Clerk and the card index of the Clerk of Elections that all of the names that went into the jury box at the time of these drawings were the names of republicans and democrats and not of socialists, and I wish, before this witness goes, to make a request for him to produce the card index for that purpose.

The Court: I will not require the witness to produce the  
68 card index for that purpose, and I will not receive testimony of the Clerk of the Board of Elections for that purpose.

Mr. Sharts: Enter an exception to the ruling of the court on the ground that we expect to show by the introduction of this testimony that the grounds of our second challenge are true.

The Court: No. What you proposed to show, Mr. Sharts, was that a comparison of the card index kept by Mr. Miller of the names in the jury box with the records of the Board of Elections—I suppose that is for Cuyahoga County, but for any county—would show the names in the card index were democrats or republicans.

Mr. Sharts: The point was simply this: We ourselves have not the list of names. It is possible we might have gone and copied all those names off his card index, but we did not do that. In order to put those names to the Board of Elections, first it will be necessary for us to have the card index to do it with, and I simply asked—

The Court: I am prepared to rule on the assumption that you asked the Clerk to produce the card index showing the list of names in the jury box, and that you proposed to show those names to the Clerk of the Board of Elections, and that you proposed to have the Clerk of the Board of Elections check them and say that the names of those on his card index are democrats and republicans. Now, you may have an offer of proof in that form and I will sustain the ob-

jection to it, but where I checked you was that you were  
 69 proposing to show by the witness that the allegations and  
 statements of a certain specification were true. You stated  
 in your specification a whole lot more than you offered to prove. I  
 do not think you intended to put it in that way but that is the im-  
 pression you made in my mind.

Mr. Sharts: Does your Honor make it a part of the record, your  
 ruling, so that it will not be necessary—

The Court: Yes, I so rule that you may have an offer to prove  
 that and an exception.

Mr. Wertz: Not as to the entire specification?

The Court: That he asked the Clerk to produce these records, his  
 card index of the names in the box, and that he offered the Clerk  
 of the Board of Elections as a witness to compare those names with  
 the names of the Clerk of the Board of Elections, for the purpose of  
 showing that the names of the Clerk's card index were the names of  
 republicans and democrats, as shown by the records of the Board of  
 Elections. That is, as I understand it, your offer of proof?

Mr. Sharts: Yes.

Mr. Wertz: So far as it applies to Cuyahoga County only.

Mr. Sharts: Will your Honor allow the same record with regard  
 to the other counties?

Mr. Wertz: I object.

The Court: Upon that point, of course, you are not in a  
 70 situation to do that. I fancy you will find, when you go to a  
 lot of the other counties, that there is no such record or classi-  
 fication, but the point is if you are right in your position and I am  
 wrong in my ruling, it will not make you any "righter" or me any  
 "wronger" if you should cover some other counties. I intend to give  
 you the point you are making on the record fully and fairly for what  
 it is worth. You may entertain a different view from the District  
 Attorney as to what it is worth, and I am desirous you should have  
 it out fairly.

Mr. Sharts: Enter our exception to the Court's ruling. For the  
 purpose of a formal record, we wish to place the Clerk of the Board  
 of Elections on the stand.

The Court: All right.

71 Thereupon the defendants, further to maintain the issues  
 on their part, called as a witness, STEPHEN McNEIL who,  
 being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Stephen McNeil. I am Deputy Clerk of the Board of  
 Elections in Cuyahoga County. I was subpoenaed to bring with me  
 certain documents and have brought with me a record of all the  
 electors of Cuyahoga County. This record does not contain their  
 political affiliations. We have such a record for each of the 568  
 precincts.

By the Court: The records I have shows the political affiliations of the electors of Cuyahoga County who voted and registered at party primaries only.

Q. I will ask you to produce the records of the political affiliations of Cuyahoga County—if your Honor will just permit that in that form——

The Court: Does that obtain throughout the entire county?

The Witness: It obtains practically throughout Cuyahoga County.

The Court: They register for State primaries, do they not?

The Witness: No, they do not register. The register center is at Cleveland, or Cleveland, West Park, Rocky River, and Bedford.

The Court: They do not register for state primaries?

The Witness: No, sir.

72 Mr. Wertz: The record is not even complete. He has only those democrats and those republicans who went to the primary to vote.

The Court: I understand that. Mr. Sharts, he has told us now what kind of a record he has. Your request is that I order him to produce them?

Mr. Sharts: Yes.

The Court: If the record were produced by him and the evidence would go to the extent you have announced it and were material, I would so order it, but I refuse to require him to do so on the ground that the record is not material and would not be received. You have your exception.

Mr. Sharts: Enter the exception of the defendants on the ground that we expect to show by this witness and his records that all of the grand and petit jurors who were drawn for jury service in connection with the indictment and the trial in this case and all of the residents of Cuyahoga County whose names were in the jury box at the time of the drawings were and are adherents of the republican and democratic parties exclusively.

Mr. Wertz: I would like to show it is not a complete record but merely a record of such republicans and democrats who voted at the primaries voluntarily, that it is only partial.

The Court: Everybody votes voluntarily.

Mr. Wertz: It is not a list of the electors who are republicans and democrats and he attempts to broaden out his exception to apply to all of the men in the jury box.

73 The Court: If you claim anything for that, I will let you examine him just enough to show the incompetency of the testimony.

Mr. Sharts: Let me point out that, even if this is not a complete list of all the electors in the county, we undertook to show—I think we are very reasonable in assuming that we can—that all whose names are in the list of jurors are there.

Mr. Wertz: That is an awful broad assumption.

The Court: I think that is a very violent inference. I fancy that you will find that not to be true, but I am not going to *mermit* the

time of the court to be taken up with the inquiry over a matter of so little materiality.

Cross-examination.

By Mr. Wertz:

The record that I have brought here or that I have is of the names and addresses of every registered voter, that is, where they have registration centers in Cuyahoga County. That registration does not show their politics. We have a separate registration of those who voted at party primaries. That shows the political affiliation claimed by the elector on the day he registers to vote at that primary. That includes all of Cuyahoga County, and contains the list of all the electors of the political party who voted and participated in the primaries.

The Court: The Court will take judicial notice of the fact that it includes only those who voluntarily registered to participate in the party primaries.

74 Thereupon the defendants, further to maintain the issues on their part, called as a witness in their behalf CHARLES W. LAPP, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Charles W. Lapp. My occupation is United States Marshal. I have held that position four years next Sunday. There are five deputies connected with my office for the Eastern Division. The deputy who has charge of the issuing of summons or serving summons in jury matters would be the person that would write the summons, the stenographer of the office. In this case it was Miss Elsie E. Lay. She is a deputy. I was marshal on June 15 and 16 and July 2nd and 3rd of this year. She was a deputy at that time.

Q. What are your political affiliations?

Mr. Wertz: I object.

The Court: The objection will be sustained.

Mr. Sharts: Enter an exception on the ground that we expect to show that the marshal is as alleged in the sixth ground of challenge, an active adversary of the defendants, also an active member of the Democratic Club of Cleveland and a former member and president of the City Council.

The grand jurors for the April term were summoned as follows: Those outside of the city were summoned by mail in registered letters, for which we get returns from the Postal Department, and those inside of the city were summoned by deputies by hand.

75 Those served by hand were served by one of the deputies, Gauchat, Kelley, Walsh or Boehme. The paper you hand me

is the command to summons a grand jury and has my return upon it. The typewritten return is not correct where it states that summons were mailed to Julius Renker and Adam Stiefel. Those people were summoned by hand. I know that because I have my journal here. Those names were written on there by the deputy before the signature. I did not see the deputies make the service, but I see the papers handed to them and I see them come back with their returns on them. There is not on this paper any return for service by hand on Renker and Stiefel. There is on the official record of my office. No return has been turned in at the Clerk's office as to the service of summons by hand, on this paper.

There has been no return made upon the last twenty names drawn for the petit jury. I have our complete record of how the services were made. There is the return from the Postal Department.

A. C. Beals, Burton, Ohio. Served by mail by registered letter, for which I have the receipt.

Guy Booth, 10605 Kimberly Avenue, Cleveland, Ohio. Service attempted, not found in the district.

R. N. Chamberlain, East Palestine, Ohio. By registered mail. (Indicating on card.)

H. H. Cogsil, Kilgore, Ohio. There is his signature. O. B. Dealing, Medina, Ohio. (Indicating on card.)

Max H. Eaton, East Palestine, Ohio. Signature of Max  
76 H. Eaton on a registry return receipt. (Indicating on card.)

William Fleming, not found. That is one of the three which we have here in which no return has been made.

In all cases where registered mail is sent to any one, if the person cannot be found the receipt, together with the letter, is returned to the sender always, so that we have the original summons back in case we mail a letter to a man that is registered and the registry card is not returned with his signature. We then make a return in court of "The within named so and so not found within my District."

In this particular instance it is a man inside of the city. Mr. Fleming is a man that lives in Cleveland and he was not found by the deputy when he went to the address given and inquired for him.

B. J. Holden. Mr. Holden's receipt on a return card. (Indicating on card.)

Mr. Carl Kimball is the next. Signature on receipt card. (Indicating on card.)

D. W. Mellinger. There is the signature on the receipt card. (Indicating on card. Received for by Mrs. D. W. Mellinger; receipted for by his wife.

Allan Mills is the next one. Receipted for by Laura Mills. (Indicating on card.)

W. G. Morris is the next one. That is Cleveland. Served by hand.

E. R. Peebles, Ashtabula. Return card signed "E. R.  
77 Peebles". (Indicating on card.)

Richards of Kent is the next. Return card signed "R. B. Richards". (Indicating on card.)



Schlaffley of Mt. Eaton. Return card signed "J. J. Schlaffley". (Indicating on card.)

Herman Schles, West 41st Street. Not found. One of the three indicated.

Edwin Thomas, of Winona, Ohio. Return card signed "Edwin Thomas". (Indicating on card.)

Kent M. Wells, Ashland, Ohio. Return card signed "Kent M. Wells". (Indicating on card.)

A. H. Weise, Holyoke Avenue, East Cleveland. Card signed by Anna Weise. (Indicating on card.)

Frank Wise. Card signed "Frank D. Wise, by Harry D. Wise." (Indicating on card.)

That is the entire number.

Beals card was signed by himself, so far as I know. Eaton's card was signed by H. E. Orth.

Allan Mills is supposed to reside in Burton, Geauga County, Ohio. The postal mark on the registration card is Chagrin Falls, Burton, Rural Free Delivery, Geauga County, Ohio, is the correct address.

The address given for A. H. Weise is Holyoke Avenue, East Cleveland. East Cleveland is not a portion of the city of Cleveland. It has upon it the stamp of the post office of Cleveland, Collinwood station.

R. N. Chamberlain's card is signed by R. S. Chamberlain.

There were no summons sent to anyone inside of the city of Cleveland by mail. There never has been since I have been in office.

78 I was present at the time of the drawing of the grand jury that presented the indictment in this case. The drawing took place in the Clerk's office. Mr. Miller was present. Mr. Miller's clerks were present, to my knowledge, and there were attorneys and other people around the counter. I cannot recall anyone else that was there as a witness.

As to the manner in which the names were drawn from the box, as I recall it, I went into Mr. Miller's office, and told him that I was there to be present at the drawing of the jury. He went into his room, got his keys to unlock the jury box and brought the jury box out, set it on the counter, unlocked it, threw back the outside cover, reached his hand into the little hole in the center of the inside cover and drew the names out one by one and I laid them on the counter in rows of ten so that we would know when we got the required number. That was all he did, so far as I know. Several times in reaching down he shook the box or mixed them up, but I do not remember just exactly what. I am positive he took out just twenty names at the last drawing. At the grand jury drawing he took out thirty names, if my memory serves me right. When I was there he drew out the cards, they were laid in rows of ten on the counter, the names and addresses printed on each card. I think in that particular instance I selected them as near as I could afterwards in a package alphabetically and handed them to the stenographer to make a list of, to be signed by the Court and by the marshal. I remember the petit jury drawing. I

79 could not say exactly what time of day the grand jury drawing was made. At the petit jury drawing identically the same thing was done as I have stated. I do not remember that I went that particular time into Mr. Miller's private office to tell him. I think I met him in the hail and we went into the office together and he brought out the jury box and set it down and we went through about the same process that I have described except that I think this last time we drew twenty names. I saw him rotate the box. He rotated it by turning it upside down and sidewise and putting his hand in and stirring up the cards on the inside. I have seen him do that at times. I do not remember just how many times he rotated it at this particular time.

Cross-examination.

By Mr. Wertz:

I have a record of the grand jury showing the manner of service upon the different persons. There were thirty drawn for that grand jury, I think. The return was incorrect in that it showed the names of three residents of Cleveland having been served by mail instead of by personal service. All members of that grand jury outside of the city of Cleveland were served by mail in registered letters, for which we got return receipts. All of the members on the grand jury included in the thirty who were residents within the corporate limits of Cleveland were served by hand. My record shows that absolutely.

Mr. Wertz: I would like to have the record show that the marshal's criminal docket shows that all members of this jury who resided in the city of Cleveland were served by personal  
80 service and that those who resided outside of the city of Cleveland were served by registered mail.

By the Court: I have before me the criminal docket of the marshal's office, in which I am required to keep a record of the service, pages 207 and 208 of this docket, docket No. 7.

As to the return to the Clerk in which I say: "Received this writ at Cleveland, Ohio, June 16, 1917, and on the same day a copy was mailed to each of the following, who personally acknowledged summons in writing," which is followed by nineteen names, and then I go on and say: "The following named were excused by order of the court" and following that are eight names. I do not mean by that return that the eight names following the first nineteen names were not served at all. They were served and excused by the court after service. I mean this return to mean that 27 persons were served either by mail or by personal service and that three were not found in the district.

Redirect examination.

By Mr. Sharts:

In the list of petit jurors I have been testifying about there is no A. R. Phoeles. There is E. R. Peebles. The name on the

registry card is signed "E. R. Peebles." This is the official list of the names that was handed to me from the Clerk's office. The name on there is E. R. Peebles.

Mr. Sharts: I would like to have the card produced.

(Thereafter the card was produced by the Clerk and read "E. R. Peebles.")

81 The record I have read from is copied in my office under my supervision. Not by myself. I do not enter the things in there. The information that is put in there is derived from the returns that the deputies make. It is a record of all the work that we do in the office. Mr. Charles D. Boehme, a deputy in my office, keeps that record.

By the Court: I am required by law to keep a record of all transactions. As to how we identify the persons who apply to the court in answer to the summons by mail, together with the summons sent out we send out a time card, and the man when he comes in to report for jury duty presents the summons and the time card at the desk and we take it for granted that he is the person to whom the letter was sent.

By Mr. Wertz: The docket which I have here is kept under my direction.

82

July 18, 1917—9:00 a. m.

Thereupon the defendants' challenge to the array of the grand and petit juries was argued to the court. The court, upon consideration thereof, overruled the same, to which action of the court the defendants then and there duly excepted.

Thereupon counsel for the defendants presented and filed a motion to quash, which appears as a matter of record herein. Said motion was thereupon argued to the court, and the court, upon consideration thereof, overruled the same; to which action of the court the defendants thereupon duly excepted.

Mr. Sharts: If your Honor please, we have now a plea in abatement which we would like to offer.

The Court: Can a plea in abatement be offered under the law after a motion to quash?

Mr. Sharts: I understand the procedure is, first, a motion to quash; next, a plea in abatement and third, a demurrer.

The Court: I supposed a motion to quash would be equivalent to a demurrer and that when a motion to quash was filed and overruled, neither a demurrer nor a plea in abatement was permissible thereafter. You have — inform me on that subject at 1:30.

83

July 18, 1917—1:30 p. m.

Mr. Sharts: If your Honor please, at the close of the morning session you intimated a doubt, or possibly a conviction on your part, that we had waived our right to file a plea in abatement by reason of our motion to quash. I have expended considerable

time this noon in looking up that point. I will admit it struck me rather unexpectedly. I had assumed all along that the federal court in such matters is controlled by the state court practice and I still take that position unless I can find something in the federal practice that is contrary thereto.

The Court: We will hear the matter on your request for leave to file your plea in abatement and objection thereto, if that is satisfactory to counsel.

Mr. Sharts: Yes. We offer our plea in abatement.

Mr. Wertz: If the plea in abatement is allowed to be filed, we would like permission to file a reply in the form of a general denial; also, as to this motion or pleading that was filed yesterday, the challenge to the array, we would like to have leave to file a general denial to that also. They are both sworn to, and as a matter of safety we would like leave to file that.

The Court: Leave will be given as there is no objection.

Mr. Kavanagh: That can be done by a nunc pro tunc order.

The Court: The record can show it as filed. Certainly the Court granted no leave and made no order for filing the challenge.  
84 It was just filed as a matter of course by the defendants and appears on the appearance docket. Now, let us have your position, Mr. Sharts.

(Thereupon the matter was argued by counsel.)

The Court: Upon examining this plea in abatement, I perceive that it raises no questions which were not raised by the challenge to the array which was tried by the court, and, on evidence presented, held not to be sufficient. If I am wrong, that is giving you one ground of error.

Mr. Kavanagh: Mr. Sharts says except as to the 15th ground.

The Court: I would not permit under any circumstances evidence to be offered in support of the 15th allegation, nor proof to the contrary. There would be no way of disapproving that except by violating the secrecy of the grand jury room. I was going to say that, if I am wrong, I have given you one ground of error, for which you announced you were looking.

Mr. Sharts: In what form are you refusing it?

The Court: I am going to refuse it on the objection to its filing. I am not going to permit it to be filed and thereby give you the benefit of an additional proposed ground of error.

Mr. Kavanagh: If your Honor please, will you state for the benefit of the record, that there were two objections made by the Government: first, as to the right to file it after having filed the other pleadings, and, second—

85 The Court: I would sustain it upon three grounds, if you wish: first, because it is tendered for the first time at too late a day. Second, because it is tendered after the Court has heard and tried a challenge to the array, both of the grand and petit juries, and this involves, so far as it is sufficient at all, the same grounds. Third, I sustain it on the ground that it is not sufficient in law as a plea in abatement. You may have your exceptions.

Mr. Sharts: Enter the exceptions for the defendants to the ruling of the Court.

Thereupon counsel for the defendants presented and filed, with the permission of the Court, a demurrer on behalf of the defendants, as appears of record herein. Upon consideration thereof, the Court overruled said demurrer, to which the defendants thereupon duly excepted.

Thereupon counsel for the defendants moved the Court for a separate trial for each of the three defendants, Ruthenberg, Wagenknecht and Baker, so as to have them tried as individuals and not all three tried together. Counsel for the Government thereupon objected, and the Court, upon consideration thereof, thereupon denied the motion for separate trials of the defendants; to which action of the court the defendants and each of them thereupon duly excepted.

Thereupon each of the defendants was duly arraigned and each waived the reading of the indictment and entered a plea of not guilty.

86 Thereupon a jury was called and took their seats in the jury box.

During the examination by Mr. Sharts of the jury, in his examination of Mr. CHARLES P. SMITH, who was called on the jury, the following proceedings were had:

By Mr. Sharts:

Q. If the evidence should disclose to you that these men have been conducting this ardent and vehement campaign against the provisions of this draft act, urging its appeal, advising their hearers to bear in mind its unconstitutional features, as they believe, and also urging their opposition to the war in general, and it should develop that a young man hearing them should, even without any direct urging from them, have felt it incumbent upon himself to refuse to register, would that cause you to form an opinion unfavorable to these defendants in this case as to their guilt or innocence?

Mr. Wertz: I object.

The Court: That gets down to the question under the law that I would have to submit to the jury as to whether the natural, necessary, and probable result of what was being done produced the result claimed, and you are putting that question of law to the jurymen to settle in his own mind.

Mr. Sharts: I was calling attention to the fact that supposing this evidence discloses that these men did not urge anyone not to register but did make a vehement protest against the law as a law and thereby a young man was induced, listening to them, to refuse to register, drawing his own conclusions not from what they  
87 said but from their opposition to the law, whether this juror under those circumstances would form an opinion as to their guilt or innocence that would be unfavorable.

The Court: In a way, Mr. Sharts, you are rather asking the juror to give his opinion under the evidence and the law in this case. I will sustain the objection to that question.

Mr. Sharts: Enter our exception.

The Court: I am of the firm opinion that in this case, as in others, people must be held to intend the natural, necessary and probable consequences of their acts as proved in the case by the evidence, and it is for the jury to say from the evidence what is the necessary, natural and probable consequence of the acts alleged.

Mr. Sharts: Then let me put the question in this form: Suppose it should develop that these men have made a very ardent and vehement attack upon the law, criticising the law and criticising the president and the government in their public meetings but have advised their hearers to register in spite of the evil features of the law, as they see it, but it should develop that a young man listening to them has been induced thereby to refuse to register, would that affect your view as to their probable guilt or innocence, that circumstance, that they were urging their protest against the draft act?

Mr. Breitenstein: I object to the form of the question.

The Court: I will let him answer that question.

88 The Juror: I think it would influence me against them.

Mr. Sharts: I would like to challenge the juror for cause, if your Honor please.

The Court: I will get a little further information. Mr. Smith, have you formed in your own mind any opinion as to the guilt or innocence of the parties defendant in this case?

The Juror: No, sir.

The Court: Have you any personal familiarity, by hearsay or otherwise, with the alleged offense charged against them and the circumstances under which it was committed?

The Juror: Not much of one. I read some in the paper at the time this took place, something of that.

The Court: Do you remember now distinctly the circumstances and details which you read?

The Juror: No, sir.

The Court: Are you conscious of any bias or prejudice against these defendants or either of them which would influence or control your judgment and opinion as to their guilt or innocence according to the evidence as it may be produced before you and the law as it may be given to you by the Court?

The Juror: No, sir.

89 The Court: I repeat to you again: can you, in your opinion, serve upon this jury and render a verdict of guilty or not guilty according to the evidence as it may be presented and the law as I shall give it to you?

The Juror: Yes, sir.

The Court: I will overrule your challenge for cause.

Mr. Sharts: Enter our exception.

90 During the examination of the jury generally, the following proceedings were had:

Mr. Sharts: Is there any man here that does not know the distinction between the socialists and the anarchists?

Mr. Wertz: I object.

The Court: That is not a proper question.

Mr. Sharts: Is there any man here that does not know there is a very wide distinction between socialists and anarchists?

Mr. Wertz: I object to that.

The Court: I will sustain the objection to that question. I am not going into a discussion of that question.

Mr. Sharts: Enter the exception of the defendants to the ruling of the Court.

(Adjournment to July 19, 1917, 9:00 a. m.)

July 19, 1917—9:00 a. m.

(Examination of the jury resumed.)

(After the examination of the jury for cause was completed by counsel for both parties, the following proceedings were had:

Mr. Sharts: At this point, if your Honor please—I have not had the opportunity to look the point up and I do not know whether it has any merit at all—but I would like to interpose a challenge to the entire array before proceeding further, on the ground that we were certainly misled, not intentionally, by the drawing of the petit jury by the order of the court following the drawing of the grand jury in that we assumed that the petit jury which would try the case was the petit jury drawn following the drawing of the grand jury, and we spent considerable time and money looking up the antecedents of the men to sit on the petit jury, and we are now confronted with a petit jury who are strangers to us entirely. It places us at some disadvantage, and while I doubt if we have a legal right to object to that method of placing a petit jury before us, I would like to interpose a challenge on that ground.

The Court: The drawing was made of additional jurors for this term and the order was made in that form, and, inasmuch as the Court has allowed you wide latitude to inquire as to the qualification or disqualification of the jurymen tendered and there is not disclosed a shadow of objection as to any of the jurymen offered you, I shall overrule the challenge.

Mr. Sharts: Enter the exception of the defendants.

92 Mr. Kavanagh: Will the Court permit the record to show that this was not a drawing for this case but was drawn for additional petit jurors to serve for the term?

The Court: That appears by the record of the Court. The order is in that form.

(Thereupon both parties passed the jury for cause, and thereafter, both parties being satisfied with the jury, the jury was sworn as follows:)

The Court: The Clerk will swear the jury.

The Clerk: You and each of you do solemnly swear that you will well and truly try the issue joined in this case wherein the United States of America by indictment prosecutes Alphons J. Schue, Charles E. Rubenberg, Alfred Wagenknecht, and Charles Baker for

violation of the act of May 18, 1917, and a just and true verdict render therein according to the testimony and the law——

The Court: Just a moment. I did not understand that Mr. Schue was on trial in this case.

Mr. Wertz: He plead guilty.

The Court: Then is that a proper form of oath?

The Clerk: I was merely going by the title of the indictment.

The Court: All right.

The Clerk: —and a just and true verdict render therein according to the testimony and the law as it shall be given you by the Court, so help you God.

Mr. Sharts: I would like to interpose an exception to the form in which the announcement was made and the form of the oath.

93 I mean the announcement regarding Mr. Schue, in the presence of the jury.

Mr. Wertz: We can produce the record.

The Court: You may have your exception.

(Thereupon, after statements of the case to the jury by counsel for the respective parties, counsel for the Government proceeded to put in evidence on behalf of the Government as follows:)

94 Thereupon, the Government, to maintain the issues upon its part, called as a witness in its behalf, ALPHONS J. SCHUE, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wertz:

My name is Alphons J. Schue. I live at 2208 Elvira Street, Cleveland, Ohio, and on the 5th of June I lived at the same place. I am 22 years old, going on 23. I was 22 years of age the 7th day of last December. I am employed at Johnston & Jennings, Machinist. On June 5th I was employed by the Brown Hoist Company, manufacturers of cranes. I first learned of the conscription or registration law when I read about the law in the paper.

Q. Now, up to the 20th of May, 1917, what was your intention about registering or not registering under that law?

Mr. Sharts: I object. If your Honor please the act under which this indictment is drawn was passed, if your Honor will remember, on a certain date, and anything that occurred or any intention or anything of that sort that may have been in existence prior to that time, I think, is incompetent in this case.

The Court: I am inclined to agree with you about that, subject to certain restrictions, but the question is not open to objection on that ground. The question is, on the 20th of May and prior thereto, what was his intent and purpose with respect to the registration provisions of that law. The objection will be overruled.

(Exception by defendants.)



95 A. I would have certainly registered if I had not heard about these Socialist peace meetings.

Q. Whom did you hear speak on the 20th of May, if you remember?

Mr. Sharts: I object, if your Honor please. Has the witness by his answer indicated any meeting of any particular date?

The Court: He has not, but the question will lead to that. All of the facts cannot be covered in one question.

Mr. Sharts: I object to the leading form of that question.

The Court: The objection will be overruled.

(Exception by defendant.)

On Sunday, about the 20th of May, 1917, I was in the Public Square in the city of Cleveland. I heard speeches made there on that day. I know Baker spoke.

I heard some speeches on the Public Square on the Sunday following that, the 27th of May. An incident that occurred on the 27th of May that fixes that in my mind was the arrest of Wagenknecht.

Q. Now, do you recall what Baker said on the 20th of May, 1917, in substance, Mr. Schue, in that speech?

A. He said he is of military age and he would refuse to register.

Q. What else did he say, that you can recall?

A. And he told about the standpoint of the socialist party, the way they voted against conscription, and that it was taken by the local here that all socialists would refuse to register.

96 Q. What is the last part of the answer?

A. That all socialists would refuse to register and induce others, telling them they would have the full support of the socialist party.

Q. Do you recall anything else that Baker said on that date? If you do not recall anything else, in order to refresh your memory I will ask you if you recall that he said anything about himself registering personally?

Mr. Sharts: I object to putting a suggestion like that in the question.

The Court: I understood you to say, Mr. Schue, that what you have testified to was in substance all you remember as to Mr. Baker's speech on the 20th of May at the Public Square; is that correct?

The Witness: Yes sir.

The Court: You may put the question, Mr. Wertz.

(Exception by defendant.)

The Witness: He said he would refuse to register, him being of military age.

Q. Do you know whether or not he did in fact register?

Q. In order to refresh your memory, I will ask whether you remember Baker saying anything about him being shot before he would register?

Mr. Sharts: I object to leading the witness to an answer like that.

The Court: You may indicate to him, Mr. District Attorney, anything in addition to what has already been said that Mr. Baker said on the subject with reference to being shot before  
97 registering.

(Exception by defendants.)

A. He said he would rather be shot here as a man than be shot in the trenches of Europe as a dog.

Q. What, if anything, do you recall that he said in connection with the answer you have just given in connection with his registering or not registering?

A. I did not understand you there.

Q. Do you recall anything that he said in connection with his rather being shot, as to what that had to do with his registering or not registering?

A. No sir.

Q. In order to refresh your memory, I will ask you whether or not Baker said anything about the constitutionality of this conscription act?

A. Yes, sir.

Q. What did he say on that subject?

A. He said it is against the Constitution because a man is guaranteed the right of life, liberty and the pursuit of happiness, and a man being forced to do this, it is taking away his liberty and taking away even his life if he is forced and drafted into the trenches.

Q. Do you recall anything else that Baker said on that subject?

A. No, sir.

Q. Now, on the 27th of May, I will ask you if you remember who was the first speaker? That is the Sunday that the arrest was made of Wagenknecht that you testified to a while ago?

98 A. Max Hays.

Q. Do you recall the substance of Max Hays' address at that time or his speech?

A. Yes sir.

Q. What did Max Hays say?

A. About this conscription Max says as it is the law now you have got to abide by the law and the only way to show you are against the law is at the time the election comes around, to throw these people out who voted for this law.

Q. Now, as I understand you, Max Hays advised compliance with this law?

A. Yes, sir.

Q. Who was the next speaker following Max Hays?

A. Wagenknecht.

Q. What did Wagenknecht say in regard to Max Hays' statement that the law should be obeyed that you have just testified to, if anything?

A. He says it don't comply with the standpoint of the socialist party.

Q. That is, Hays' attitude, do you mean?

Mr. Sharts: I object.

The Court: I think the witness is proceeding in order, Mr. District Attorney. Proceed with the rest of your answer.

A. (continued). That ain't complying with the socialist standpoint and that he is not talking for the socialists; that they have taken a very decided stand on this here act of conscription, that all socialists would refuse to register, that it would not be the way Max says, that we do not have to obey this law.

Q. That is, who said that?

A. Wagenknecht said that—we do not have to obey this law.

Q. Do you recall anything else Wagenknecht said at that time?

A. He says up to conscription, up to disobeying or obeying laws, there is two things you can do: you can either disobey the law and go to jail or obey it and eat gravel and dust the rest of your life.

Q. In what connection did he use this last statement, as to the rest of your life, that you can eat gravel and dust all the rest of your life?

A. In what connection?

Q. Yes. What did he mean by that, as you understand?

A. He meant if you would register——

Mr. Sharts: I object to what he meant.

The Court: Yes.

Q. What did he say would happen to you if you registered, if anything?

A. What would happen?

Q. What you could do, if anything, if you registered?

A. If I would register I would be taking the chance of being drafted, being sent to the trenches; they could do with me just the way they wanted, set the Constitution aside, which gives a man the right of freedom; but by refusing I could stand up like a man and say at last to the capitalists that the working man at last had something to say here too.

Q. Now, I want to understand your answer in connection with the two things that you said Wagenknecht said you could do in regard to this conscription act. What were those two things?

A. You can either obey the law and take the chance of being drafted or disobey the law and go to jail.

Q. Now, in what connection did he use that statement about eating dirt and sand, that you have testified to?

A. In connection with just what I have said.

Q. I do not understand you.

A. What is that?

Q. I do not believe the jury understands the answer.

A. In connection with just what I have said. If you are being drafted you are doing just what the capitalists want you to do and they can just force you to do anything then.

Q. Now, do you recall anything else that Wagenknecht said in that speech?

A. I do not.

Q. You say you cannot?

A. No, sir.

Q. In order to refresh your memory, I will ask you if you recall this statement——

Mr. Sharts: I object.

The Court: It is not permissible to put to him the statement that you want to elicit. You may direct his attention generally to the subject, as to whether or not anything was said relating to a given subject, and, if so, to tell what was said.

Q. In order to refresh your memory, I will ask you whether anything was said on the subject of fighting and fighting and fighting, and, if so, what was said?

A. He says: "We will fight and fight and fight until there  
101 is no more fight left in us."

Q. Fight what?

A. This here act of conscription.

Q. In order to refresh your memory, I will ask you what, if anything, was said on the subject of protecting socialists who failed to register?

A. Yes sir.

Q. And, if so, what was said?

A. He said that it was the socialists' standpoint that all socialists of military age would refuse to register, as was voted in St. Louis, and all others that would refuse to register would have the full protection of the socialist party.

Q. Do you recall the time you were placed under arrest?

A. Yes, sir.

Q. What, if any, protection did they furnish you?

A. Not a thing.

Q. Now, following the arrest of Wagenknecht on May 27th, who was the next speaker?

A. Ruthenberg.

Q. Do you recall what Ruthenberg said in his speech to you?

The Court: His speech on that occasion.

A. I do not recall exactly but he said something about an act has occurred this afternoon like occurred in Russia.

Q. What is that?

A. An act occurred here this afternoon that has occurred in Russia right along.

Q. Do you recall anything else he said?

A. I recall talking against capitalism.

102 Q. What did he say against capitalism? I do not know that it is important.

Mr. Sharts: I think it is quite important, if your Honor please, that we shall know what——

Mr. Wertz: If you remember.

The Court: Do you wish to withdraw the question?

Mr. Wertz: Yes.

The Court: Of course, if it was a part of the remarks made by Mr. Ruthenberg on the public occasion referred to, it is all entitled to go in. It is not material who brings it out. It can be brought out on cross-examination and the Court would not undertake to control your discretion in doing it.

Mr. Wertz: I withdraw the question.

The Court: All right.

Q. Do you recall anything else that Ruthenberg said on any subject?

A. He said if he was of military age and if he was asked to go he would rather have his body riddled with bullets than to submit to this here registration.

Q. Do you recall anything else that Ruthenberg said?

A. No.

Q. In order to refresh your memory, I will ask you whether anything was said on the subject of opposing this law at the expense of sending every one of its members to jail and, if so, what was said?

The Court: By Ruthenberg, you mean?

Mr. Wertz: By Ruthenberg.

A. He said he would rather—if the members all stick, they would rather all go to jail than to submit to this here law.

Q. I will ask you whether or not you recall anything that was said by Ruthenberg on the subject of newspapers and their hysterical appeals, if anything, and, if so, what was said?

A. That the newspapers are all under one—just like manufactured from one factory, that everything is just the same and it is hard for us to believe anything that we are being told by them.

Q. In order to refresh your memory I will ask you if you recall anything being said about Billy Sunday in connection with the conscription act?

A. No, sir.

Q. In order to refresh your memory I will ask you if you recall anything being said on the subject of having been bludgeoned and forced into the war against our will, and, if so, what was said?

The Court: That is, by Mr. Ruthenberg at the May 27th meeting?

Mr. Wertz: By Mr. Ruthenberg.

A. He said that we have been just like humbugged around, you know, and these here capitalists are the cause of it, and after robbing us of what we produce they even try to ask us to defend what we have been robbed of.

Q. Can you recall anything that Ruthenberg said as to the position of the socialist party in regard to conscription, and, if you do, what do you recall?

A. He says they have taken a very decided standpoint and it was being voted at St. Louis and they re-adopted at the local here and

they all refused, every socialist, to register and encourage others not to.

104 Q. In order to refresh your memory, do you recall whether or not anything was said on the subject of the Thirteenth Amendment to the Constitution of the United States, and, if so, what was said?

A. Yes, sir. He says that it is against involuntary servitude?

Q. What else on that subject, if you recall?

A. I cannot recall nothing.

Q. Do you recall anything that he said in that connection in regard to the attitude of the courts, and, if so, what do you recall?

A. Nothing.

Q. What the courts had to do with this Thirteenth Amendment?

The Court: He says he recalls nothing said by Mr. Ruthenberg at that time on that subject.

Q. Now, do you recall anything that Ruthenberg said on the attitude of the socialist party in Cleveland in regard to this conscription act?

The Court: Has he not already answered that?

The Witness: I have.

Mr. Wertz: I think not, in Cleveland.

The Court: You may repeat what was said on that subject.

The Witness: They re-adopted this here what was in St. Louis, that all socialists refused to register.

Q. In order to refresh your memory, I will ask you if you remember anything he said about what he would do in case he came between the ages provided for in that law?

105 A. He said he would refuse to register, rather have his body riddled with bullets.

Q. I will ask you if he said anything in that connection in the event that the law was amended to cover the age in which he was?

A. Yes, sir. He said if the law gets amended that it takes in his age, he will refuse.

Q. I will ask you if you recall anything that he said upon the question of rather going to jail than to the trenches?

Mr. Sharts: I object. That has, I think, been covered.

Q. If so, what do you recall on that question.

The Court: I will let the question be answered once more.

A. He said he would rather go to jail than go to work and go to the trenches.

Q. Now, Mr. Schue, as the result of these speeches that you have testified to, of Mr. Baker and Mr. Ruthenberg and Mr. Wakenknecht, what conclusion did you reach in your own mind as to registering or not registering?

A. After these speeches I made up my mind not to register, hearing the way it was against the Constitution, which I believed

they knew more than me. I thought it was right and I refused to register.

Q. These are the men here, Ruthenberg, Wagenknecht and Baker? (Referring to defendants.)

A. Yes, sir.

Cross-examination.

By Mr. Sharts:

I was born in Cleveland, Ohio. My mother was born in Germany and my father was born in Alsace, the French part. Both of  
106 my parents have been German subjects since 1870. I am a machinist. I am not a member of the Union.

Q. Have you attended other socialist meetings besides those that you have mentioned on May 20th and May 27th?

A. No, sir.

Q. Those are the only meetings that you have attended?

A. Yes, sir.

Q. Did you ever read any socialist literature?

A. No, sir.

Q. Never read any socialist literature, and so the opinion that you formed of what these men were advocating was formed entirely from what you heard on May 20th and May 27th from word of mouth?

A. Yes, sir.

Q. On May 20th down here at the Public Square you said that Baker spoke. Was this meeting of May 27th at the same place?

A. May 27th?

Q. Yes, the same place as May 20th?

A. Yes, sir.

Q. At the Public Square?

A. Yes, sir.

Q. That is to say, Baker spoke on May 20th in the Public Square and Mr. Ruthenberg and Wagenknecht spoke on May 27th in the Public Square?

A. Yes, sir. When Baker spoke, he stood on a stone in the Square about six feet from the Recruiting Office. The Recruiting  
107 Office was not put up at that time, I hardly think. It is up there now.

When Mr. Baker was speaking, they said there were about two thousand people there. I am no judge of numbers, I can't say if it is 500 or 100. I will put it at about 500.

During the time Mr. Baker was speaking, there was no interruption. There was a man who introduced Mr. Baker to the crowd. I do not know him. I had never seen Mr. Baker before. I seen him at the meeting. That is the first time I ever saw him. I knew it was Mr. Baker by him being introduced. That light haired fellow there is Mr. Baker. (Referring to defendant Baker.) The man who introduced Mr. Baker was none of these persons (indicating defendants). I have not seen him around the court room and do not see him here now. My eyes are pretty fair.

Mr. Baker spoke between twenty minutes and half a hour, I guess. I believe Mr. Ruthenberg followed him. I was not there all the while steady during Mr. Ruthenberg's speech. I stayed through Baker's speech. After Mr. Baker stepped down and Mr. Ruthenberg got up, I stayed around the Square there for about half a hour or so, just walking around. I was not particularly interested in what was said right there. I had not lost interest. I made up my mind to go home pretty soon. I stayed around about half an hour walking around the Square and went home. During that time I did not meet any one I knew. I went home on the street car. I did not see any one on the street car that I remember. That was about five

o'clock, I believe. I took a car on the Public Square.

108 I believe they started speaking about two-thirty. Baker must have spoken between three and four. The first man talked about half an hour or three-quarters of an hour. He talked longer than Baker. The first man was Tom Clifford. I heard all that he said. During the time Tom Clifford was speaking, I stood about six feet away from him. The crowd was right up around Mr. Clifford, and I was a short distance behind the front of the crowd. They were packed in, but you could get out if you wanted to. I recognized Tom Clifford. I heard him talk about three-quarters of an hour. Baker was the next speaker, and talked about twenty minutes. During that time I remember all of this that I have testified that Mr. Baker said. During the time that Mr. Baker was speaking, I did not see any stenographer in the crowd. There must have been about fifty police there, I guess, scattered through the crowd.

While the speaking was going on, the crowd applauded frequently. The speaker interrupted a while until they were through. I can't just say if I did not miss anything that was said because with the applause I could not hear just too good. The applause breaking in now and then drowned out the words of the speaker. That was true about Clifford's speech. There was applause when Baker got up. While he talked during this twenty minutes I think the crowd interrupted him about ten times. About every two minutes they would break into applause. There was pretty loud applause. It was prolonged, I should judge, for about a minute or so. Not each time.

Some were longer than others. There was no roughing in the crowd, only applauding whenever they talked to please them. The crowd seemed to be worked up. It was receiving these remarks pretty warmly and making a good deal of noise to show their approval. During the entire time I was there and on my way home I did not see any one that I knew. I believe I took a Lorain street car that day at the Square. The street cars were running all the time as usual while the speaking was going on, I believe. There was considerable noise from that source there all the time the speaking was going on. In spite of that I believe I heard everything that Baker said.

As to how I know they were talking on May 20th instead of May 18th, for example, I have only attended on Sundays and I can look at the calendar and see what a Sunday is marked. And I ought



to see at what time I can remember when these speeches were. I have not looked on a calendar since then. I have talked with the District Attorney. I told him it was in May, the last or second last Sunday, but I know it was a Sunday. That was the Baker speech. It seemed to me it was the second last Sunday in May, and I talked it over with the District Attorney, and he fixed that date in my memory. There was a meeting earlier than May 20th, the first one that was held in the rain. I could not tell you what day in May that was. I attended that.

As to whether I particularly distinguished what Mr. Clifford was saying from what Baker was saying, the talk was all generally against capitalism and against conscription and registration. I cannot recall to my mind that I heard Mr. Ruthenberg talk on  
 110 May 20th. I am clear about him speaking on the 27th. He may have talked on the 20th, and he may have said some things that I remember on May 20th. Mr. Clifford and Mr. Baker and Mr. Ruthenberg all talked about on the same subject, only said the words different. When Mr. Clifford talked I paid just as close attention as when Mr. Baker talked. When Mr. Ruthenberg talked on the 20th, I walked around the Square. I know positively Clifford talked against conscription.

Q. Can you state positively whether Clifford talked about registration or do you consider those the same thing?

A. I take them the same.

Q. That is, you do not distinguish between registration and conscription?

A. I know he talked against registration, and if you talk against registration you talk against conscription.

Q. And if you talk against conscription you thought that was a talk against registration, didn't you?

A. I know the word when he says "registration;" I know he is talking against it then.

Q. Did he use the word "conscription?"

A. Yes, sir.

Q. Did he use the word "conscription" or "registration" each time just as you have given it?

A. He used them both.

Q. You did not distinguish when he said "conscription" and when he said "registration," did you?

A. I surely ought to know the difference in the word.

111 Q. I do not mean the difference in the word, but did it convey any different meaning to your mind?

A. I just don't understand you on that part.

Q. That is, do you confuse registration with conscription, consider them practically the same terms?

A. No, I do not.

Q. Meaning the same thing?

A. No, I do not.

Q. Or do you have a difference in your mind?

A. I have a difference in my mind.

Q. What is the difference?

A. The difference in my mind is if you are registering you are only going down and writing your name, where conscription is just *liking* drafting; they can draft you.

Q. Now, how long have you kept that distinction in mind?

A. Since I have heard these socialist speeches.

Q. Did they distinguish between the two?

A. They have talked against—

Q. Did they point out the difference between registering and being conscripted?

A. Yes sir.

Q. They pointed out the difference?

A. Yes, sir. They said if you are registering you are running chances of being drafted. That means as much that you are running chances of being conscripted.

Q. That is, you say that drafting and conscripting are the same?

A. They seem the same to me.

112 Q. And registration did not seem to you very different, did it?

A. It is entirely different, yes.

I would say it was about the center and near the finish of Mr. Clifford's speech that he made the remark about conscription. Generally when he talked of registration, he talked of conscription, because the talk was not of conscription, the talk was against registering June 5th, and the results was pointed out, what it would be if you would register June 5th. He talked of registering and conscripting all at once. I do not know exactly in what part of Baker's speech he talked of conscription. I know it was in his speech though. He did not start right out about conscription, not the first word right out. I do not remember what he did say at the first. I cannot recall any statement that he made at the beginning. As to whether I remember how he closed his remarks, I know he says about him being arrested in Akron, or wherever it was, and there when it was questioned him what he would rather do—to be drafted and go to the trenches or be shot, then he said, "I would rather be shot here as a man than in the trenches as a dog." He said that he had said that at Akron. I don't know if he exactly closed his speech in that way. I can't recollect just how he did wind up his speech.

As to what he said about capitalism, he says capitalism is the cause of this war, because there are foreign markets, one trying to overdo the others, and then our being rolled out of this here money, and then it is up to them yet—they go to work and call us

113 to defend what they robbed us out of. They all talked about the same. I can say Baker said this. He said the whole socialist party is opposed to war. He explained how the socialists voted in St. Louis, and re-adopted this here principle of not registering, that all socialists would stand to this and would not register. Baker said something about the St. Louis meeting, but I cannot recall what he said as to what kind of a meeting it was. It was something about registering, that they had decided not to register. I do not know what kind of action had been taken there, but he said

something about St. Louis when he talked. I don't know whether that was at the beginning of his speech. About the center or the end of Baker's speech he remarked about conscription. I cannot give you the exact language that he used when he spoke about conscription. The substance of what he said, as I understood, was that he was of military age and would refuse to register and advised others not to register.

Q. Now, let me ask you, Mr. Schue, whether or not you are positive he said "register" or "conscript," or whether he used the word "conscription," that he was of military age and he would refuse to be conscripted?

A. I believe that he said that he would refuse to register.

Q. You believe it?

A. Yes, sir.

Q. But you have been giving us the substance and not the exact language?

A. I cannot recall the exact language because I have not  
114 copied it in shorthand or typewriting.

Q. You simply got that inference from his speech in a general way, that he was saying that he would not register?

A. Yes, sir.

Q. He may have said, "I will refuse to be conscripted"? You would not positively deny that, would you?

A. He may have said it later on.

Q. Could not he have been saying that at that time?

A. If he says: "I will refuse to register" he would surely follow by saying: "I refuse to be conscripted."

Q. That is, it would be the same thing in your mind?

A. It would not be the same thing. I says he would follow with that.

When he said that this was the standpoint of the socialist party, that he would refuse to register and this was the standpoint of the socialists, I gathered from his remarks that all the socialists were going to refuse to register, and were going to defy the law requiring them to register. He talked against registration and he advised others not to. While he was talking of conscription, talking of the socialist standpoint, while advising all others, to cheer them along, I guess, he brought it in that he, too, would refuse to register. It was in that connection that he brought in about all the socialists refusing. He made the remark that he would rather be shot here as a man than be shot in the trenches of Europe as a dog. He said that he said that some place to a reporter, I guess, and he brought that remark up again. He was repeating something that he had

said to some man at some other time. He said somebody  
115 asked him what he would do, whether he would register or not, and he said that he told that man that he would rather be shot as a man here than out in the trenches be shot like a dog. I believe that Baker made these remarks after he said that this act was against the Constitution. First he talked about the constitution and then he talked about registration, and that he was willing to be shot like a man for not registering.

On May 27th Max Hayes was the first speaker. I do not know him personally. I know it was Max Hayes by his being introduced. I could point him out if he was here. I do not see him around here. When this man introduced Max Hayes, it was on the Public Square over at the other stone, right across them Marshall's Drug Store. Max Hayes talked the Sunday that Wagenknecht was arrested, the Sunday immediately following the speech of Baker. They were standing on a stone step. The street cars run along there and were running at the time. The speakers judged the crowd to be about two thousand, and mentioned it as about two thousand in their speeches. I cannot recall which speakers mentioned it.

In the second meeting, the first speaker, Max Hayes, talked on the conscription law and said it was the law and they should abide by the law. I should judge he talked about one hour and fifteen minutes. I heard him the whole time. I was standing about twelve feet away from the platform, right in the middle of the crowd. I should say there were about fifty policemen around. I did not see any stenographer or anybody taking it down in shorthand. The crowd was just packed in up against the platform. After

116 Max Hayes talked, Wagenknecht was next. All of this time I was standing. Wagenknecht talked about fifteen minutes.

During the time he was talking there was much interruptions from the crowd in the form of applauding, shoutings and hand-claps. I did not notice anything else by way of interruptions. These interruptions were frequent, and some of them were prolonged. At the start, he criticised the remarks of Mr. Hayes. He says that Hayes is not representing the socialists, that Max Hayes' remarks were not in line with the Socialist position. During the whole time that Max Hayes was talking I gave close attention. All that I remember about Max Hayes' talk was that he said that the conscript law is a law and we must abide by the law. He talked about capitalism, talked about the way the people have got in different countries, about how the people have got it in Australia by sticking together, and how the people are advancing and freeing themselves in Russia, and he talked on this Conscription Act. The main part of his remarks the way it seemed to me, was capitalism and conscription. He used the word "conscription" and he used "registration." I cannot recall whether he used the word "draft." While he was talking he was sometimes interrupted by applause. I applauded once in a while. When Wagenknecht talked, I also applauded. I know the person who acted as chairman introduced Max Hayes. It was not the same man who introduced the next speaker. A different man introduced Wagenknecht. While I was listening to Max Hayes, I did not meet any person in the crowd that I knew. I did

not see any faces around there that I recognized. After  
117 Wagenknecht had talked about fifteen minutes I did not see anybody that I knew. I saw the arrest of Mr. Wagenknecht. I do not know who it was that arrested him. When he was arrested I did not go with the crowd. I guess the crowd went down to the court house, following the policeman who walked down with him. I listened to the other speech and then I went down.

The crowd was just a few minutes in departing, and then the other speaker started, Mr. Ruthenberg. I had never seen or met Mr. Wagenknecht before and did not know him by name before. I did not know Mr. Ruthenberg before. I had heard him.

Q. Had you ever had any communication at all with him?

A. No, sir.

Q. Or with the Socialists?

A. No, sir.

Q. Never had done anything at all to identify yourself with the Socialist party?

A. No, sir.

After Mr. Wagenknecht was taken away, Mr. Ruthenberg got up. He was introduced by a man whose name I do not know. He was here in the court room. I can't see him now. Mr. Ruthenberg must have talked about half an hour or forty minutes. I listened clear through. Mr. Wagenknecht was no more than taken off the stand than the man got up on the stand and introduced Mr. Ruthenberg. He said the people should stay there, should not follow the policeman, should listen to the next speaker. He talked about two

minutes. The man who introduced Max Hayes talked about  
118 a minute or so. The man who introduced Wagenknecht talked a minute or two. After Wagenknecht had talked fifteen minutes, there was a little interval of confusion. I should say it took about three minutes until the crowd had quieted down and the next speaker could go on after Wagenknecht's arrest. On the assumption that Ruthenberg talked thirty minutes, I stood there two hours and some five minutes listening. Mr. Ruthenberg's remarks were made at the close of this meeting. I had been giving close attention through it all.

It was Wagenknecht that made the remark that the Socialist Party has taken a decided stand against conscription. His exact language, as I remember it, was, he said the Socialists have taken a very decided stand upon "This here act" or "Upon this here Conscription Act." I cannot give you the exact words. He says: "We will fight and fight till there is no more fight in us until this Conscription Act is erased off of the statute books." He said: "You have got two things in this here. In obeying and disobeying the law. You can either obey the law and go to work and eat sand and dust the rest of your life, or else disobey and stand up like a man and go to jail." He gave them the Socialist standpoint there, and the other speakers had said all those that would not register would have the full support of the Socialist Party. I cannot repeat what Mr. Wagenknecht said on that occasion immediately following Max Hayes, but anyhow he says Hayes is not talking or representing the Socialist Party and his idea is different from the socialists. I cannot recall that he went into any elaboration of what  
the difference was. He then went on to talk about the  
119 standpoint of the Socialist Party with regard to conscription and that they should not obey conscription and that they should fight and fight and fight until they had this statute erased from the statute books, and he told them they could either

obey the law and take the chance of being drafted or they could disobey and go to jail. I do not remember what his concluding remarks were when the police came and arrested him, but I just know it was against conscription. Then the police jumped in and arrested him right in the midst of what he was saying.

After Mr. Ruthenberg had arisen, there was applause. I heard what Mr. Ruthenberg said at the beginning of his remarks. I think the substance of his opening remarks was: "An act has occurred here this afternoon just like has been occurring in Russia right along." I do not recall what followed that. The next thing he said that stuck in my mind is about capitalism. After he talked on capitalism, he talked about registration. He said he would rather have his body riddled with bullets than to submit to conscription. That is his language as close as I can recall it. I cannot recall anything further. The part which I have given you is what I do remember clearly. I cannot give you the wording of anything beyond that. I can recall it if I have got an impression of it. At the close of Mr. Ruthenberg's remarks, I walked down to the jail and walked around the jail.

(Thereupon the court cautioned the jury as to their conduct and adjourned until 1:30 p. m.)

120

(1:30 p. m., July 19, 1917.)

Mr. Kavanagh: Mr. Sharts, have you any objection to this answer being filed as of July 17, without a formal order?

(Handing paper to Mr. Sharts.)

Mr. Sharts: If your Honor please, I must interpose my objection. They at that time when I asked that they file an answer or a demurrer so as to make an issue, or file exceptions, did not do it, and the Court ruled that they were not required to, and it seems to me, if they made a mistake, and the Court was wrong in his ruling, they ought not to be permitted to correct it at this time, after the challenge to the array has all been disposed of.

The Court: I remember that yesterday the request was made that they might do so.

Mr. Kavanagh: Before you disposed of it.

The Court: Before the jury was impanelled, and the defendant did not object and I said if there was no objection that might be done.

Mr. Sharts: That was in regard to the plea in abatement.

The Court: With regard to both.

Mr. Sharts: I certainly did not understand that they were asking at that day to file an answer to the challenge to the array. I thought it was simply in case your Honor permitted a plea in abatement to be filed.

The Court: I understood it the other way. I will take the paper and will have the stenographer look up what occurred and then decide what should be done.

(Thereupon the examination of the witness Alphons J. Schue was resumed as follows):

121 Cross-examination (Continued).

By Mr. Shrts:

At the time that Mr. Ruthenberg was speaking, there was another meeting being held on the Public Square by some religious order. I did not notice what order. They stood right across from Marshall's Drug Store, on the same stand as Mr. Ruthenberg. They gave way for the Socialist party because at that time they can only take the one stand, and they gave way for these to use the stand to speak. During the time that Mr. Ruthenberg was speaking, there was music at the Recruiting Station. I cannot just recall whether it was at that time. I know there was music there, of a life and drum corps. I cannot say if they were speaking for recruiting or what for. I heard some noise there. This was while Mr. Ruthenberg was speaking. I do not know whether the music had been playing for some time, but I know it started while he was speaking, while I was there. I could not say for sure whether or not it was playing while Mr. Wagenknecht was speaking. I do not believe it was playing when Mr. Hayes was speaking. It might have been playing while Mr. Wagenknecht was talking and I am sure it was playing while Mr. Ruthenberg was speaking. I do not recall any other noise on the Square while this talking was going on. After Mr. Ruthenberg finished, I went down to the police station immediately, just to see where the crowd went to, and then went home. I did not meet any acquaintance there that I talked with and did not enter into conversation with any one that I can recall.

122 Redirect examination.

By Mr. Wertz:

Q. Were you on the 5th of June an enlisted man in the regular army, navy, marine corps, national guard or naval militia in the service of the United States, or an officer in the reserve corps or an enlisted man in the enlisted reserve corps in active service?

A. No, sir.

Mr. Sharts: I will ask the Court to strike out that answer for the reason that on redirect examination, if I am correctly informed, under the rules of evidence, they cannot introduce new matter.

The Court: I will permit the inquiry to be made, in my discretion.

(Exception by defendants.)

123 Mr. Wertz: I would like to offer now the record in this case, which shows that Alphons J. Schue plead to this indictment.



The Court: Produce the record, Mr. Clerk.

The Clerk: The record is in court, if your Honor please.

Mr. Wertz: I will call Mr. Denzler.

Thereupon, FRED J. DENZLER, was called as a witness in behalf of the Government and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wertz:

Q. I am asking you now, in connection with the case of the United States versus Alphons J. Schue, Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker, No. 3873, pending in this court, when Alphons J. Schue was arraigned and plead to that indictment, what his plea was?

A. On July 5th, the defendant A. J. Schue was arraigned. He plead guilty in manner and form as he is by the indictment therein and thereby charged.

The Court: Any cross examination?

Mr. Sharts: No sir.

124 Thereupon the Government, further to maintain the issues upon its part, called as a witness in its behalf, JAMES L. LIND, who, being first duly sworn, testified as follows:

Direct examination.

My Mr. Wertz:

My name is James L. Lind. I am Chief Assistant Police prosecutor of the city of Cleveland. I am acquainted with Mr. Wagenknecht, Mr. Ruthenberg and Mr. Baker. I was present on the Public Square on the 20th of May, 1917, on the occasion when Mr. Baker made a speech. On that occasion Mr. Baker started off with a talk with reference to the war in Europe and the cause of the war. He said that the foreign countries had been dragged into the war by reason of the system of over-production, as he termed it, and it was for the purpose of seeking the new markets for that over-production of the capitalist class. He talked at length on that and then he referred to the conscription law, saying that the national party in convention at St. Louis had passed a resolution in which they were opposed to the conscription proposition, and he said also that the socialists of the state had re-enacted that same resolution. Of course, his exact words I do not entirely remember all the way through for the reason that I heard several meetings and heard several speakers at each one. He said that by the conscription law, if a man failed to register, he could be sent to jail, and then said that there are two things you can do. You can either register and go to murder your fellow workmen or else you can go to jail, and then—I think in a joking way—he said something about “Then the capitalists will have to feed you,” and then he closed up with—There

125 was more said, of course, with reference to this conscription,



but that in substance is what I remember of the speech. I think he said the Socialist Party would defend those arrested for failing to register. He also said this, that the law was unconstitutional, and referred to the section of the constitution which provided that a man's right to his pursuit of happiness shall be inviolate. That is about all that I recall of his speech. I do not recall whether he read a resolution or not. The resolution of the National socialist party was referred to and he gave it in substance, but whether he read it or not I don't know. I do not recall whether Baker said he personally would or would not register. It was a speech that took all told, I think, over half an hour to deliver, and perhaps fifteen or twenty minutes of that was devoted more especially to the causes of the war and a discussion of the war situation, and then he said there was this other subject of conscription and registration, and I have given, I think, the main things that I remember that were said there by Baker. I do not recall anything else that he said on the question of registration other than what I have testified to.

I was present at the Police Station on the 27th of May when Wagenknecht was brought over there. On that occasion he told us his full name and address and that he was employed by the Socialist

Party as a state organizer, I think, and that he had been so employed since December of 1916. He said that he had been

interested in socialism practically all of his life and that at times he devoted all of his time to the party and that at other times when the party did not have enough funds he had other employment. He talked about his speech of the 27th just immediately previous to his coming to the station house. Parts of the speech were read to him. I think the parts that were read went something about as follows: something about, "we, the socialist party, will fight and fight and fight this conscription law to the end." He was asked if he had said that and replied, yes, he did. Of course, other parts of the speech were read and there was a whole lot more said. I asked the stenographer, Frank Farasey, to read from his stenographic notes.

I was in the crowd and heard Max Hayes make his speech on the 27th of May. He was the first speaker, if I am not mistaken. Max Hayes in his speech advised the socialists to band together to have the law repealed by means of political action and said further that he would not advise any one of age not to register, and so when Wagenknecht came over to the station, I said: "Well, Max Hayes kind of upset the dope today." I think I used that slang expression. "You did not expect him to talk in that tone, did you?" I think his answer was: "Not exactly," and then another answer to that question put at the same time was: "Well, Max Hayes has been away from the party somewhat of late." Whether that was to that first

question or not—several times we referred to that matter of

Hayes' talk being along a different line than Wagenknecht's—

and then there was some talk about Wagenknecht, as to his apparently fiery way of making his speech. I think I asked him if he was angry because Max Hayes had talked in the tone he did. Something along that line was said. In Wagenknecht's speech on the Square, he said that Max Hayes in his speech did not represent

the platform or program of the Socialists with reference to conscription, and that he reiterated again, I think, in the meeting at the police station. Max Hayes had said that he would not advise any one not to register, he would advise any one of age to register, but that he felt the law should be repealed in the legal way, that is, by banding together politically. I referred to Hayes' statement and attitude in talking with Mr. Wagenknecht after he was brought to the jail and I said: "Max Hayes kind of upset the dope today, didn't he," or something along that line, or to the effect that Max Hayes evidently did not go in line with the rest of the speakers. There was something said about free speech, if I am not mistaken, and I said that it was not our purpose to interfere in any way with free speech, but I did not feel that when a man was advising violation of the laws that that was in any way what was meant by free speech. It seems to me that Wagenknecht replied either to that or some similar question: "Well, maybe I did go too far." I made a comparison to Wagenknecht, comparing Hayes' attitude to his in regard to advocating the violation of the law, but do not exactly recall what he said in answer to that.

128 Cross-examination.

By Mr. Sharts:

I have not testified as to all of Mr. Wagenknecht's statement with regard to the affair of May 27th. I heard the speech of Mr. Wagenknecht on May 27th on the Square. I did not testify as to all I recalled of that speech. As to what else I recall, he got up, as I say, real excited and seemed to be in a hurry to say what he had to say. His face was flushed and his first statement was to the crowd that he did not—that Max Hays did not represent the socialist party in his speech just finished. Then later on he said that the socialist party was unalterably opposed to the conscription law and would fight and fight it to the end he said—and this was in a very excitable way that he said this—he said: "Now, you can either go to jail or go to murder your brothers. You have a choice of one of two things. You can either go to jail"—and he repeated that several times, and the crowd at that point yelled, "Jail, jail," a couple of times, the people in the audience back of me yelled, and then it was just shortly after that that he was taken from the platform and taken over to the station. He was interrupted in his speech. I heard him use the words distinctly, that they were going to fight and fight and fight against this conscription law. I think he might have said "until it will be erased from the statute books" at one point. I do not have a distinct recollection that it was said, of that part of it. I have of the use of the words "fight and fight and fight" the conscription. You see I heard meetings on the 6th and 20th  
 129 and 27th and then a few other Sundays following that and so I do not remember them as well probably as if I had only heard one. He pointed out the distinction between what Max Hayes said and the position of the socialist party. That distinction, as I got it, was that Max Hayes would advocate a repeal of the law by

means of numbers in a vote of some sort and through Congress, but that the socialist party were advising young men not to register. He did not use those words, but he referred to the national platform. He said that the party stood by that national platform in St. Louis, if I am not mistaken. I do not recall anything in his speech that indicated that they would not stand by the entire national platform. I remained there after Wagenknecht was arrested on the 27th. Mr. Ruthenberg talked.

Redirect examination.

By Mr. Wertz:

I recall asking the question: "Hayes evidently does not believe in advocating the violation of law and that is where he differs from you?" I do not recall what Mr. Wagenknecht answered in reply to that question. I do know, in answer to that, he said this, that the socialist party were opposed to the registration-conscription law and were advising refusal to register and that Hayes had simply advised that they work together to get the law from the statute books.

130 Recross-examination.

By Mr. Sharts:

Q. This statement that you refer to, was it at the police station?

A. Yes, in the police inspector's office.

Q. Was Mr. Schue present?

A. I don't think so. I don't know Mr. Schue.

Mr. Sharts: If your Honor please, I am going to ask to have the testimony of this witness with regard to any admissions made by Mr. Wagenknecht at the police station stricken out as not having been made in the presence of Mr. Schue.

The Court: I will overrule your request and you may have your exception, but I will make this statement in addition to that—

Mr. Sharts: We will take an exception.

The Court: The jury will not regard any testimony given by this witness as to what transpired at the police station except as it was and was intended to be a repetition of that which had taken place or transpired on the Public Square. Any part of the testimony that is of a different character than that will be disregarded by you.

Mr. Wertz: I ask the court to add only as it applies to Mr. Wagenknecht.

The Court: Yes; that which transpired down there can only be regarded by the jury as it applies to Mr. Wagenknecht.

When I questioned Mr. Wagenknecht at the police station asking him about the position that the socialist party took, I was clear in my own mind as to the position of the socialist party. I thought I knew what their position was because I had heard six or seven speakers. I had heard Wagenknecht and Ruthenberg and Tom Clifford and some man whose name I do not recall now—I think he was representing the socialist labor party—and there

was one other speaker whose name I do not recall, on the different Sundays. I heard some of these talks on May 6th, 20th and 27th. I do not necessarily consider the statement of the socialist labor party speakers as showing the position of the socialist party, only as the were reiterated by the socialists when they talked. It was a joint meeting. It was announced as a joint meeting of the two organizations. I am not positive whether that was the meeting of May 6th, or the one of May 20th. My best recollection is that it was the one of May 6th. I understand that was before the law was passed. The statements that they made at that time were with reference to a law that they saw impending possibly, but not yet enacted, I guess. I heard everything that Ruthenberg and Wagenknecht said on the 20th and on the 27th, and it was from that that I got my impressions as to the position of the party. After listening to the speeches of May 6th, I did not cause the arrest of any of the socialist speakers, nor on May 20th. I heard the speech of Mr. Ruthenberg following Mr. Wagenknecht on May 27th. I did not cause the arrest of Mr. Ruthenberg.

132 Thereupon the Government, further to maintain the issues upon its part, called as a witness in its behalf, S. J. STUCKY, who being first duly sworn, testified as follows:

Direct examination.

By Mr. Breitenstein:

My name is S. J. Stucky. I reside at 7811 Platten Avenue. My occupation is that of Patrolman on the police force of the city of Cleveland. I have been a patrolman in the police force of the City of Cleveland for six years. I was such officer on the 20th day of May of this year, and on the afternoon of Sunday, May 20th, of this year, I was assigned to the northwest corner of the Square in the city of Cleveland. I heard several speakers on the Public Square on the Sunday afternoon, May 20th of this year. One was Baker, the gentleman there. (Indicating defendant Baker.) Ruthenberg is another one. What I heard Baker say in that public address on the 20th of May, in substance, was: He spoke more on the foreign affairs and the market, as to how the war was brought about, the condition of the capitalists and the affairs of Europe, and as a socialist speaker he spoke on conscription, which he said was unconstitutional, and if he was in the age limit, which he is required to register on the 5th day of June, he would rather go to jail than go over and shoot down his brother men, and if there was any young man in the audience between that age, they can have the same privilege of going to jail or registering, which the capitalists would feed them while they were there. That during a national convention  
133 at St. Louis the socialists as a body opposed the war and as a body they would try to repeal the law, and he then spoke on different capitalists and the market, and the market was open and when the capitalists wanted to find a new market, in order to declare the war, it was brought about, they had to find a way and a

means to ship their produce to a foreign market. He said that the conscription law was unconstitutional and if he was of the age of conscription when he was called on the 5th day of June to register, he would rather go to jail than to shoot down his brother men. He said he was within the age limit, and would be called upon to register the same as the rest of the young men within this ordinance, and when he would be called upon to register he would rather go to jail than shoot down his brother men. With reference to the socialist party aiding any of those who refused to register in accordance with the provisions of the selective conscription act, he said that if any of them were arrested they would see that they were taken care of to their best ability as they could. That is all that I can recall in reference to the registration and the conscription law.

I came to the Public Square on Sunday afternoon of the 20th of May of this year at 1:15 with a squad, and remained there until about 5:45. I was there all the time between 1:15 and 5:45. With reference to the place where the speaker was standing on that 134 afternoon, I was about eight to ten feet from the rostrum, that is, the speaker's stand, more in the southwest corner of the speaker's stand, within eight or ten feet of it. I heard practically all that the speaker said. I was there during the entire speech of Mr. Baker. I heard Mr. Ruthenberg speak on that afternoon. I could not say whether he was there during the time Mr. Baker was speaking. There was quite a crowd there. He was there a part of the time. I could not say whether he was there all of the time or not.

#### Cross-examination.

By Mr. Sharts:

The speech of Mr. Baker that I listened to was on the 20th. I did not say there was a socialist labor speaker there. Mr. Baker began, I should judge, about two or two fifteen, somewhere near that time. There was another party speaking before him, but I do not know his name.

I have never seen this young man Schue before that I know of. I do not know him. (Mr. Schue stands up.) I never saw that man to my knowledge. I did not see him there on May 20th that I know of.

Mr. Baker spoke about 25 minutes, I should judge. During that time there must have been a crowd of about 1500 people, I should judge. They applauded once or twice while Mr. Baker was speaking. When Mr. Baker was speaking he would turn. He would talk at one time in one direction and at another time in another. He never 135 turned his back in my direction. When he would turn from side to side, naturally his voice being throwed on a side as he kind of turned, it would become more or less distinct. He did not turn all the way around; more of a quarter of a turn of a circle. When he turned away I could hear every word. During the time he was speaking you can hear the noise of the street cars passing, and people passing there at all hours. That afternoon there was another meeting a little further over, some religious meeting.

That was on May 20th. There was no recruiting going on at that time that I know of.

I was present on May 27th. While Mr. Baker was speaking, I saw Mr. Lind, the police prosecutor, there. There was no interruption of Mr. Baker by the prosecutor that I saw. He was not placed under arrest on the 20th. Mr. Baker was not prevented from making any statements. When he finished, he left the audience, as far as I could see of him. The meeting closed, I should judge about 4:45 or 5:00 o'clock.

When Mr. Ruthenberg was speaking, the police prosecutor was there part of the time. After Mr. Ruthenberg finished speaking on the 20th, there was no arrest made of either Mr. Baker or Mr. Ruthenberg. When Mr. Baker was speaking, there were, I should judge, about 20 police throughout the Square, and about the same number when Mr. Ruthenberg was speaking. I was present when Mr. Wagenknecht was speaking on May 27th, but I was not the arresting officer. Mr. Baker in his talk said that conscription was unconstitutional. He said he was within the age limit, the same as

136 a good number more of the young men within the hearing of his voice, and if he was called upon to register on the 5th of June he would rather go to jail than go over and shoot down his brother men. I do not remember that he said he would not register. I did not hear him tell any man "You must not register" or "should not register." He said he would rather go to jail than shoot down his fellow men, his brother men. The only thing he spoke of on the socialists was on the convention at St. Louis. He did not speak on resolutions that were adopted at that convention or tell any of it. He did not produce anything that he read from that I saw.

137 Thereupon the Government, further to maintain the issues upon its part, called as a witness on its behalf, WILBUR D. BACON, who being first duly sworn, testified as follows:

Direct examination.

By Mr. Wertz:

My name is Wilbur D. Bacon. I live at 1579 Rosewood Avenue, Lakewood. I am in the service of the United States. In the month of May, 1917, I was in the newspaper business, employed on the Cleveland Leader. Since then I have enlisted.

Q. Were you present at a meeting some time in May at which Ruthenberg and Wagenknecht were present?

A. Yes sir.

Q. Do you recall the time of that meeting, the date?

A. It was on or about the 13th day of May.

Mr. Sharts: I object to any further examination on that line.

The Court: What have you to say?

Mr. Wertz: I want to inquire about this resolution.

(Referring to Government's Ex. No. 1.)

Mr. Sharts: I will interpose my objection to the introduction of any such leaflet unless it be first established that it was used after the enactment of the law.

The Court: I will say to the jury, and I will say to them now, that no conviction of these defendants or either one of them can be predicated upon any act which was done and performed  
138 by the defendants prior to the 18th of May, 1917, but it is in evidence here from one of the witnesses who has testified that after the 18th day of May 1917 some one or the other of these speakers referred to the action taken by the local organization of the party that they were undertaking to represent and proclaimed in a way what that action had been, and you will recall the other testimony, which seems to me makes this evidence competent, if for no other reason than as bearing upon the motive and intent and as characterizing the conduct and attitude of these three defendants on the 20th and 27th of May. I am not undertaking to say what its weight would be. The competency of this witness to testify with respect to any resolution or any action taken or that would bind either of these defendants as participants in the adoption of it or assent thereto has not been disclosed, but this statement will indicate in a general way what my ruling will be as questions arise, so that you may take your exceptions now or interpose them from time to time.

Mr. Sharts: I will take our exception now to the ruling of the court, and, if your Honor please, I would like to call your attention further, for the protection of the defendants in this matter, to the fact that we are, I believe, limited strictly to what was brought to the attention of Mr. Schue. Any activities by the association, either before or after May 18th, if those activities were not brought to the  
attention of Mr. Schue, cannot be introduced in this case.

139 The Court: I concur entirely in that position. I shall rule and charge in accordance with it, but the testimony here as to what was said and done by these defendants on the 20th and 27th of May in the presence of Mr. Schue makes competent, if it should appear that these defendants were participants in the adoption of any resolution of this character, the evidence of the fact as characterizing their motive and intent and as bearing upon the primary charge here as to whether they aided and counselled Schue wilfully and as to the intent with which their acts were done and performed which have been testified to. That will be the line of ruling. You may have your exception.

Mr. Sharts: I will take my exception to that and ask Your Honor whether it is necessary to raise the question now as to the form of this resolution in the leaflet as it is offered here?

The Court: We will see about that when we get to it. He has not proved any resolution was adopted and he has not proved the contents of it nor that these defendants were involved in it. I will rule on your objections as we progress.

Q. Do you recall who presided over the meeting?

A. Mr. C. E. Ruthenberg presided.

Q. Is that the gentleman sitting at the table here?



(Indicating defendant Ruthenberg.)

A. It is.

Mr. Sharts: Enter an exception.

The Court: The objection will be overruled.

Q. Did you see Mr. Wagenknecht at that meeting?

140 A. Yes, sir.

Mr. Sharts: Enter our objection, and I will ask the witness to wait always until I enter the exception.

The Court: Mr. Stenographer, you will note an objection and exception to each one of these questions and answers, even though Mr. Sharts does not specially mention it, and I do not specially rule.

Q. Do you recall whether or not Mr. Baker was present?

(Objection by defendants; overruled; exception.)

A. I do not recall if he was present or not. I did not see him.

Q. Do you recall the presentation at that meeting of a resolution in regard to the registration under the Conscription Act?

(Objection by defendants; overruled; exception.)

Q. I hand you a paper marked "Government's Exhibit No. 1" and ask you to examine it and see if you recognize what that is?

(Objection by defendants; overruled; exception.)

A. That is the resolution passed at the meeting at the Socialist Hall.

Mr. Wertz: I do not know whether the Court and jury heard the answer or not.

Mr. Sharts: I object to the presenting of that clipping. There has been no connection shown between Mr. Schue and any meeting at that time, of the reading of that resolution to Mr. Schue or any definite explanation of that resolution to Mr. Schue.

The Court: I think it would perhaps be prejudicial to  
141 your clients if I were to summarize the testimony, as I recall it, of Mr. Schue as to what was said by these defendants in the meetings on the 20th and 27th of May. For the purpose of bearing upon the intent with which the acts were said and done which have been testified to by Mr. Schue as having taken place in his presence and in his hearing, I will admit the copy of the resolution referred to. I will say this much, that Mr. Schue indistinctly testified that it was stated by these speakers as to what had been the attitude of the National Socialist Party in their convention at St. Louis. It was further testified by Mr. Schue that it was stated by these speakers that the local organization of the Socialist Party of which they claimed to be representatives had taken some action, but without going further you will remember the rest of the testimony bearing upon that subject. Under the circumstances, as characteriz-



ing and bearing upon the intent which it is necessary here for the government to prove, I regard the resolution as competent evidence.

Mr. Sharts: Before he introduces it I want to call Your Honor's attention further to an omission. How has he identified the resolution referred to in any particular speech that Mr. Schue heard with this particular resolution? If Your Honor please, I ask that they introduce first the resolution of the National Socialist Party that they say the speakers on May 20th in the hearing of Mr. Schue referred to and said that the Socialist Party of Cleveland had taken similar action with regard thereto. There is no evidence before the Court at present that this is the resolution in accordance with the resolution of the National Convention of the Socialist Party.

The Court: I will overrule your objection.

Mr. Sharts: Enter our exceptions.

The Court: I did not understand you to say where the meeting was held where this was adopted.

The Witness: The meeting was held at the Socialist headquarters, 773 Prospect Avenue, Cleveland, Ohio.

Q. In Cleveland, Ohio?

A. Yes, sir.

Q. On the 13th day of May?

A. On the 13th day of May.

The Court: The resolution which has been identified by the witness as having been passed at that time at a meeting presided over by one of the defendants and attended by another one of the defendants may be read in evidence, but this will not be regarded as evidence against Mr. Baker, whom the testimony does not yet show was then present or a party to it.

Mr. Sharts: Will the Court permit me to question the witness on a few points?

The Court: That you think goes to the competency of the testimony now offered?

Mr. Sharts: Simply as to his knowledge of how many resolutions were passed and with reference to what.

The Court: That does not go to the competency of the testimony now offered. It might go to his credibility or to his memory or to other matters which are collateral but not to the competency of what is being offered. No, not for that purpose.

Mr. Sharts: Enter our exceptions.

The Court: He is the Government's witness for the present.

Q. Do you recall whether there was a platform in this hall?

(Same objection by defendants; overruled; exception.)

A. There was a platform in the hall.

Q. Where was Wagenknecht with reference to that platform?

(Same objection by defendants; overruled; exception.)

A. According to the viewpoint of the audience, he was on the right of the *right of the* platform sitting in a chair near the table.

Q. How close to the front of the platform?

(Same objection by defendants; overruled; exception.)

A. Judging off hand, I would say four feet.

Q. Was he on the platform?

(Same objection by defendants; overruled; exception.)

A. He was on the platform, as I remember it now.

Q. Ruthenberg—where was he on the platform?

(Same objection by defendants; overruled; exception.)

A. He was standing and sitting alternately in the center of the platform.

Q. Did he have the gavel?

(Same objection by defendants; overruled; exception.)

A. He had the gavel.

144 Q. Do you remember if either Wagenknecht or Ruthenberg spoke in regard to this resolution?

(Same objection by defendants; overruled; exception.)

A. They both spoke in regard to the resolution at various times.

Q. Was this the resolution that was adopted at this meeting?

(Same objection by defendants; overruled; exception.)

A. Yes, sir.

Mr. Wertz: I now offer in evidence the resolution as Government's Exhibit 1.

The Court: Read it. The defendant may have an exception.

Mr. Sharts: I will ask, if Your Honor please, that the entire handbill that he has clipped from be offered at the same time.

The Court: The Government will please comply with the request, and put the whole handbill in.

Mr. Wertz: At the request of the defendant.

The Court: The rest of the handbill goes in at the request of the defendant.

(Thereupon the handbill was read to the jury by Mr. Wertz, the part containing the resolution being marked "Government's Exhibit No. 1," and a complete copy of the handbill being marked "Government's Exhibit No. 2.")

Mr. Wagenknecht resides at 1291 Cook Avenue, Lakewood, Ohio. He is the gentleman at the end of the table, there.

## 145 Cross-examination.

By Mr. Sharts:

I attended a meeting on May 13th or thereabouts. It was either the 13th or the 14th. If the 13th was on a Sunday, the date is May 13th. At that time there had not been any enactment or passing of any conscription act in Washington that I know of. The act was passed by Congress May 18th, some five days after this. At the time this resolution was adopted, I believe it was understood that the registration should be enforced by the laws of the United States. It was understood by the President's message to Congress. That is my opinion of it at this time. I am not able to give any legal answer on that, because I do not know. I do not know whether at that time it had been finally determined that there was to be a penalty attached for refusing to register. At that time I do not believe it could have been possible for a man to have inferred that there was to be a voluntary registration, as at election time. It was generally understood that conscription is what it means, that it is not voluntary. On May 13th I had read the acts which were being argued in Congress. As far as I know, I do not believe there were men advocating both the voluntary method and the involuntary method. The distinct feature of the conscription act which was being fought out in Congress was involuntary conscription, and it was that involuntary act that the socialists gathered in that hall were fighting against and passed this resolution to offset. At the time when this resolution was passed, the

146 form in which registering was to be done had not been decided finally. That had not been decided until May 18th. At this meeting of May 13th, I did not receive that leaflet (referring to Government's Exhibit No. 2). I received a copy of the resolution from Mr. Ruthenberg. Mr. Ruthenberg presided at that meeting of May 13th. It was on a Sunday afternoon, if Sunday was May 13th. Mr. Wegenknecht was present. I do not remember of seeing Mr. Baker at that time.

Mr. Kavanagh: At this time we desire to offer in evidence Government's Exhibit 1, the resolution submitted, and Government's Exhibit 2, which is the complete leaflet.

The Court: Under the circumstances, for the purpose of not encumbering the record, may not a circular be substituted and the entire document marked Exhibit 2, but the record will show that all except the resolution was put in by request of the defendants after the court had ruled and they had made their exceptions to my ruling that the resolution itself was admissible in evidence.

(Recess.)

147 Thereupon the Government, further to maintain the issues upon its part, called as a witness in its behalf, FRANKLIN H. FARASEY, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wertz:

My name is Franklin H. Farasey. My business is court stenographer, shorthand reporter. I was employed by Mr. De Woody, of the Department of Justice, to take in shorthand the speeches made in the Public Square in Cleveland on May 27, 1917. I have in my possession the original notes of the speeches which I took on that occasion. I produce those notes and turn to the speech made by Alfred Wageknecht. My notes of his speech read as follows: "We have a friend of ours here to my right, who is taking shorthand notes, evidently for the federal authorities. I hope that he will do me the great favor of underlining what I am about to say, because I want that to appear in capital type when he writes down the notes or his typewriter—not only in capital type, but in quotes and with exclamation points by the dozen after each sentence.

Comrade Hayes has given you his version of this question of conscription. It happens, however, that our friend Hayes' version does not quite agree with the official action of the socialist party of the United States, and, not agreeing with the official action of the socialist party of the United States, we must say that this afternoon Max Hayes does not speak for the socialist party. The socialist party

has taken a very definite and decided stand upon this matter  
 148 of registration for conscription. The national convention of the socialist party went on record and declared that it shall be the duty of every dues-paying member of the socialist party to fight and fight until there is no more left in them against conscription whenever and wherever he can. And we are going to fight. We don't intend laying down on the job at this time, just because our capitalistic government, controlled by the Rockefellers and the Morgans, say to us, "You shall do so and so." The capitalistic government has said to labor unions: "You shall do so and so" and time and again the labor unions have said, "We refuse to do so and so because it interferes with our liberties." And we say now, "We shall refuse to do that which interferes with the liberties and democratic rights of the working class." We socialists shall fight and fight until the conscription law is removed. What do you suppose we are standing on this block for every Sunday bellowing our lungs out? Do you suppose we are here just for fun or just to hear ourselves talk? We have got something to say. The socialists of this country and of this state, and of Cleveland, have laid specific plans which they intend to follow and which they are going to follow. It may be—it may be that the socialist party may seem—I say, may seem, insignificant, and an organization which to you may not seem to wield much power, but let me tell you this, friends—let me tell you this: The actions of the socialists of the world within the last several months have done more—and the publicity given to  
 149 these actions by the capitalistic papers has done more—to eliminate prejudice against the socialists, and to bring about peace than anything else that could happen, no matter what you thought of it—and that is true.

Why is our Government afraid of the Stockholm peace conference? Tell me. Why is it afraid of the Stockholm Socialist International Conference? We know why they have been. We claim that peace shall be brought and that the war shall end with no country the victor. That is our claim. That is, I think, where eventually the socialist party, every local, every county and every state and national organization will stand. However, that is not the position of the American capitalistic class; that is not the position of the French capitalistic class; although it is the position of the Russian working men. And why is it not the position of the American and the English and the French capitalistic class? Because they have made up their minds that German capitalism shall be—shall disappear from the earth as opposed against French, British and United States capitalism. That's the reason why.

Now, the socialists don't care a whoop in hell which capitalistic class is the most powerful in this world. All we care about is that we shall make the working class of every country the most powerful in that country. And so we lay down this principle, that no matter what you may think about us socialists, no matter what you may think about us as an insignificant political part, we at least—under-

stand—we are at least the only party with backbone and  
 150 power and nerve and the belief in justice and democracy sufficient to come out before you and proclaim our principles irrespective of this man here who is writing the shorthand notes, irrespective of the recruiting station, irrespective of the policemen who are in the audience.

Now, there are two things you can do, friends. There are really two things you can do. There are always two alternatives for every man who lives in any democracy or under any republican form of government like this one. There are two things you can do under any circumstances, when it comes to obeying or disobeying the law, and these two things are these: you can either obey the law made by your masters and grovel in the dust and eat sand for the rest of your life, or you can at last stand up like men and say, "The time has come when we, through organized power and strength, must say to capitalists that they cannot any more curtail our rights and our freedom and our liberty."

Of course, during this period of change, during this period when the working class is ascending to power, many of us will have to take jail sentences because we were the pioneers, understand, in this movement for working class liberty, but then somebody has always had to take jail sentences who were pioneers in a movement for the liberty of any people, understand. And so we are willing to-day to take those jail sentences, and because we are willing—because we are willing to take those jail sentences, we say to you that you have full rights to do one of two things upon this matter of conscription.

You can either register and run a chance of being  
 151 drafted, or you can refuse to register and go to jail. Now, you have the right to go to jail, don't you know? You, brother, don't you know that you have a full right to go to jail if you want to? You have just as much right to refuse to register and

go to jail as the Government has the right to say that you shall register and go to murder.

Well, the question is, of course,—you may applaud here this afternoon—but after a bit the question will be this: how many of you will have moral courage enough to refuse to register on June 5th? That's the question. That's the question, friends. The conscription law and its success, understand—the conscription law and its success depends in a measure upon the fact that thousands upon thousands will refuse to register. Do you know that? A man within the age limits—any man—any young man within the age limits who does not grant the Congress of the United States the right to say that he shall go to war without first giving him a chance to say whether he wants to go or not, such a young man has his first opportunity to make a protest against conscription by refusing to register. That is the first place to protest. There are subsequent ways to protest, but this is the first place to protest.

Now, then, we are here this afternoon to explain the situation to you. What we say this afternoon is this: that every man has the right to do one of two things, and I want to repeat that. He has the right to do one of two things. He can either refuse to register  
152 and run a chance of going to jail"—That is all.

Q. What happened at that point?

A. The speaker was arrested, I think.

Q. What is that?

A. The speaker was arrested. At any rate, he stopped talking.

Q. Did you go with him or with Mr. De Woody to the county jail?

A. Yes, but I haven't those notes.

Q. I will hand you a transcript here and ask you whether you made that transcript from the original notes and whether or not it is a correct transcript?

A. Yes, all of that, and I read that over.

A. I will ask you to read the conversation that took place between Mr. Wagenknecht, Mr. De Woody and yourself and Mr. Lind at the police station, following his arrest?

Mr. Sharts: If your Honor please, I want to enter my objection at this time. Mr. Schue is charged as the principal who refused to register, and the statements that have been made here by the reading of those notes are the only statements that were made or that could possibly have been made in the hearing of Mr. Schue. Any further statements cannot be added on top of and in addition to what has been presented as a complete record of the statements made by Mr. Wagenknecht.

The Court: You do not object to the use of the transcript because he has not produced the notes here from which he says he has transcribed it?

Mr. Sharts: I understood he was reading from his original  
153 notes on the first.

The Court: He did on the first. Now, on the conversation at the jail, he says that he does not have his original notes here but

he has the transcript of them which he himself made and says it is a correct transcript. If you insist that he shall send for his original notes and have them here for your examination, if you wish to examine them before he reads the transcript or reads from it, I would rule you are entitled to that.

Mr. Sharts: I ask that privilege, because I have some knowledge of shorthand myself.

The Court: Do you know where your notes are?

The Witness: This was taken at the police station on the back of other sheets. I think I can gather them all together. I am not dead certain that I can, but I believe that I can.

The Court: Where is your office?

The Witness: In the Engineers Building.

Mr. Wertz: We will pass that until we can get those notes.

Q. Following the arrest of Wagenknecht, I will ask you if you took down the speech of C. E. Ruthenberg?

A. Yes, sir.

Q. Will you turn to your notes and read that speech?

Mr. Sharts: Are these the original notes?

The Witness: Yes, sir, and the first speech also.

(Witness reads from notes:)

154 Comrades and friends: it is our purpose and our duty to remain here at this meeting and continue our protest against a violation of the democracy which the government of this country says it is fighting for. What has happened here this afternoon is the thing that has happened so often in Russia until the Russian working class took—I could not get the exact couple of words. There was too much applause.

The Court: There was applause at that point, then?

The Witness: Yes, sir.

The Court: Proceed.

A. (Continuing.) The socialist party in the United States and in the city of Cleveland is ready to uphold democracy at the expense of sending every one of its members to jail. Now, I am going to present to you, just as I intended to present to you before this interruption took place, our ideas and position in regard to the war and in regard to conscription.

The President of the United States, in January of this year, appeared before the Congress of the United States and delivered a speech in reference to bringing about peace. In that speech before the Senate of the United States he advocated bringing about the end of the war without victory for any nation. Immediately the news spread across the Atlantic to the nations of Europe that the President of the United States had demanded peace without victory for any nation, and the forces of democracy in Europe began to endorse the position taken in that speech. The socialists of France went on record as favoring that position. The socialists of Great Britain, the minority party in Germany, the socialists of Austria and the socialists of Italy, and finally came the Russian

revolution, and the entire Russian people, through their committee went on record in favor of that program.

And then these working class organizations began to agitate, began to work for a peace movement to realize these terms of peace. The socialists International called a conference at Stockholm. It was initiated not as the lying, prostituted newspapers of Cleveland have said—it was initiated not by German influences, but by the Russian, the Swedish, and the Belgian socialists, Belgium, that Vanderbilt represents as Minister of Munitions, endorsed this position, as have the socialists in most of the countries represented by the allies in this war. And mark this. This is my point. This is the answer to that appeal which is being made to the young men of this nation to go out and fight for democracy. When the socialists of the United States asked for passports for its representatives to attend the conference, endeavoring to bring about peace on the terms announced by the President of the United States before this country declared war, this democratic country, so-called, refused to permit the representatives of the American socialists to attend that conference. If that is democracy, then Russia before the revolution was a democracy.

156 To-day the President of the United States stands in the position of having offered terms of peace, having offered terms on which to bring about the end of the horror, the bloodshed, the suffering, the misery of Europe, the horror, the suffering, the misery into — the men of this nation are about to be plunged—having offered terms on which to bring about the end of this condition, and then refusing to permit—for the President is responsible for the action of the State Department—and then refusing to permit free men to leave this country to work for those terms—to work for peace.

Now, my friends and comrades, what is the reason the Government of this country does not desire the peace conference at Stockholm to be successful? Why doesn't he wish the working class, the working class representatives from every nation in Europe, to gather together to bring about mutual terms of peace through which they can save the working class from more misery, more suffering, more bloodshed, more killing and members of the working class?

The answer is that terms—peace brought about on those terms at the present time would not serve the interests of the capitalistic class of this country, in whose interest the war was declared and is to be fought. It is for that reason alone that the government of this nation does not want these socialists to be represented in the Stockholm conference or peace brought about through the efforts of the  
157 working class. The capitalists class is not fighting a war for democracy. The United States is not fighting a war for democracy. It is fighting a war for commercial imperialism and the profits of the capitalist class of this country.

Now, then, if this be true, if the appeal for democracy be one of those lying statements which are always put out by the ruling class in every nation in order to trick the workers into serving their interests and offering their lives in their interests, what shall be the position of the working class of this country in regard to this war?



We have been told this afternoon that we are an insignificant minority. It may be true that the socialists' political organization in this country is still a minority, but in this matter it represents the wishes and will of the majority of the people of this country.

If there need be—if there need be any proof of that position, we need only to look at the audience which is assembled here and which has stood here in this spot Sunday after Sunday to hear the socialists denounce the government and its action in this war. We need only to look at it to secure the opinion of the workers of this city generally. We need only to look at the newspapers and their hysterical appeals to the people to register for conscription. They are trying everything under the sun. They are doing all in their power through the  
 158 Billy Sunday form of revivalism to induce you to register for conscription. They are afraid. They are afraid that the working class of this community may on registration day enact their own referendum in regard to this law by refusing to register. (Loud applause.) What is our action to be?

My voice is strong enough, I think, comrades and friends—my voice is strong to spread over this audience, I believe, in spite of the fact that we are to be assisted in gathering a bigger audience.

There was a fife and drum corps playing there.

Q. Does it show what the fife and drum corps was doing?

The Court: Your notes do not show anything on that subject, do they?

The Witness: Yes, I have here—

The Court: What do your notes show?

The Witness: Fife and drum corps.

The Court: Proceed.

A. (Continuing:) What is to be the position of the working class of this nation in regard to war and registration for conscription? Are we in this country, having been bludgeoned—no other word described it—having been forced into the war against our will, against our wishes and in violation of the mandate on which the Presi-  
 159 dent and Congress was elected—are we to meekly submit and lie down and permit the ruling class to do evil, base, dirty work?

Have ever in the history of the world—have ever the rights, the liberty, and the freedom of a people been preserved by cowards who refuse to carry on the struggle in the face of danger? And we of the socialist party say to you that never in the history of the world have a people maintained its liberties, maintained its freedom, in the face of aggression, in the face of attempts to place democracy in the saddle by accepting the will of the ruling class.

It was difficult to take it because we were in the crowd and often times I would be elbowed accidentally and sometimes I would have the book up or down. That is why I have not got the word there (indicating to Mr. Sharts).

Friends, the only way we can maintain our freedom—the only way we can maintain our liberties in this country, is by continually agitating and working, rousing up the people to a sense of what is being done by their government; and, when the time comes, sweep

that government out of power and to elect the representatives of the working class to office to undo the evil work that has been done by those who are in power.

Now, my friends, for the benefit of the authorities in this  
160 audience, and for the benefit of those who may be ignorant of the fact, I want to say that the first amendment to the Constitution of the United States, which is being rode over rough-shod to-day here in this audience by the police authorities and the men whom they represent—the first amendment says that the right of the people to free assemblage—

Mr. Sharts: Let me ask, whenever you have in your notes the word “applause”, would you please announce that? Re-d your notes as you have them there, not picking out just the speech?

The Court: Of course, the applause is not a part of Mr. Ruthenberg’s speech, but if you request that he read it, he may do so.

Mr. Sharts: I want his complete notation read in.

The Court: All right.

A. (Continuing:) My friends, the only way we can maintain our freedom—the only way we can maintain our liberties in this country, is by continually agitating and working, arousing up the people to a sense of what is being done by their government: and, when the time comes, sweep that government out of power. (Applause.) And to elect the representatives of the working class to office to undo the evil work which has been done by those who are in power. (Applause.)

Now, my friends, for the benefit of the authorities in this audience, and for the benefit of those who may be ignorant of the fact,  
161 I want to say that the first amendment to the Constitution of the United States, which is being rode over rough-shod to-day here in this audience by the police authorities and the men whom they represent—the first amendment says that the right of the people to free assemblage and to petition Congress through meetings of this kind shall never be abridged. That’s what the document which underlies the institutions of this country says in regard to this matter, and we intend to avail ourselves, in the face of any power that may be brought against us, of this right to uphold freedom, to fight for freedom, through arousing the people of this nation to a realization of the things that they are facing.

And, further, we of the socialist party have taken a certain definite position in regard to conscription. We have taken this position, that the thirteenth amendment to the Constitution of the United States forbids involuntary servitude. And we take the position that when Congress enacts a law which is a violation of the fundamental law of the nation and the ruling class enforces that law through the courts which it controls, then the only way that we people can show that they do not intend to have their freedom and their rights trampled under foot is by refusing to submit to that law. (Applause.) And  
162 so the socialist party of the city of Cleveland by resolution has gone on record as urging and recommending to every worker who is inspired by a belief in humanity, to every worker who believes that wholesale murder is just as wrong as the murder of an

individual—as urging and recommending to every worker who does not desire to take a gun and shoot down his fellow human beings, no matter whether they are being called Germans or Austrians or Russians or English—whatever their nationality may be—we have said to those workers by official action of the socialist party that we urge and recommend that they refuse to be registered for conscription.

I say to you here this afternoon, as I said at the first meeting which I addressed on the Public Square after war was declared—at the first meeting, at a meeting, at a time when the ages in the conscription law had not been fixed, I said to you then, when I personally was in danger of conscription, that if I came between the ages provided for in that law, that I would refuse to register for conscription. (Applause.)

My friends, I am ready to say more: that if this law is amended, that if later, after the workers who are to be drafted have been sent to the trenches of Europe and have been mowed down by the millions against the socialists on the battlefields of Europe, if, after a first million or two of the flower of the humanity of this country has become the victims of the ruling class in their insensate  
 163 greed and desire to make profits, if they have become pulsating masses of human flesh, and then Congress amends its law to draft men of greater ages into the army, and those ages include mine, then I shall refuse to become the victim of the ruling class and be conscripted. Further, that if the time comes that I am asked to go into the army, if my name were registered by force and the government drafted me, believing, as I do, in humanity and being opposed to killing my fellow human beings—opposed to the wholesale murder which is going on in Europe—then I say that the ruling class and government of this nation will find that they will have to stand me against a stone wall before they can bring me into the army to fight their battles.

I think I have made our position in regard to conscription, and in regard to the war, as clear as it can be made. I tell you as frankly and as openly as I possibly can that we socialists do not intend to do this work of murder. I would be saying little to you if I left you only this message. If I only told you that we socialists do not intend to register for conscription, if I told you only we socialists are opposed to the war, then my message would not be complete. What are we to do? What are we to do? What have we the power to do? My friends, let me say first and foremost that the one thing  
 164 that we must not do in this crisis—we of the working class must not resort to any kind of force. We of the working class must not resort to any kind of violence. For us that would be suicide. Let us stand for the principles which we favor. Let us go from rostrum to rostrum, from meeting to meeting, to spread broadcast this message which we have been spreading here this afternoon. Let us preach this doctrine to all of the workers of this city. Let us insist upon our rights of free speech to the extent of our going to jail. Let us willingly and gladly go to jail rather than to the trenches, but let us never resist by force.

State what you have to say, and let the ruling class do its worst, for, remember, you have the power in this nation, you have the strength in this nation. When the time comes to do so, thrust those who are trying to enslave you out of office and yourself take control of the powers of government. Let us until that time abide peacefully, keeping on our agitation, never fearing the result of speaking the truth, for we have the right to speak the truth, but no violence and no force.

Remember, my friends, I tell you here so that you may spread the news around. Your first opportunity will come in the city of Cleveland on November 6th when you go to the ballot box. You have the power there to elect socialist candidates and make this a free city for the working class.

165 I assure you that the socialist party will continue these meetings as long as there are men who are able to talk. Next Sunday afternoon at 2:30 we invite you to bring an audience three times as large as this. That's all the place will hold. Come over to Market Square at Lorain and 25th and we will again present to you the facts of the betrayal of the people of this country by its servants in declaring war and placing a conscription law on the statute books.

My friends, if the Wilson administration had, before the November election of last year, said to the people of this country that "Next May we will enact a law by which we will be able to take the young men of this country out of their homes, by which we will be able to take those who are to be the stamina, the backbone, of our civilization in a few years and send them out to fight for the billion dollars which Mr. Morgan and his fellow capitalists have foolishly invested in the European war, by taking a gambler's chance and backing the allies to win—" if President Wilson and his supporters had said that before the November election, the President and the Congress that favored such a measure would have been buried under such an avalanche of votes that he would have been the worst beaten president in the history of this nation. (Applause.)

If the President and Congress, having enacted a law which even all the appeals, all the urging, all the calls to duty, all the  
166 appeals in favor of a sham national patriotism which the newspapers have been able to bring to bear—if all of this has not been able to induce the American people to support this law, then it is not the socialists who are opposing this law who are traitors to this nation, if this is a democratic nation—it is not the socialists who are unpatriotic—it is not the socialists who do not stand for democracy—but it is the government and the President who put the law on the statute books that deserves the utmost condemnation of every free-thinking man and woman of this country.

Let me go a step further in the duty of the hour, in the thing that we as workers must do to carry on this fight to a successful conclusion. Our power as an organized mass—our power as an unorganized mass, I should say, as individuals, does not amount to a great deal, but if the five thousand or more men and women who are within the reach of my voice organize their power, then, before

the election day comes, they can sweep this city and establish real democracy through a working class government. The socialist party gives you the opportunity to do this work. It is ready to be the nucleus around which the men and women who are inspired by the ideal of freedom, the ideal of democracy, the ideal of liberty, can gather—around which they can knit together their power  
167 and win this victory.

And so we ask those of you who are in attendance, we ask those of you who are in this fight, to join the organized socialist movement in the city of Cleveland, so that together we may end Czarism and autocracy in the city of Cleveland and the nation as well. And this is the way to do it. Here are application cards for membership in the socialist party. It is a card which every man and woman—pass them around, comrades. Just a minute and I will continue—a card which every man and woman who joins the socialist party signs. It reads as follows: this is the pledge for working class people—

I started to take that and did not finish.

The Court: That is all you took?

The Witness: No, I took more.

Mr. Sharts: Read what you took.

The Witness: I scratched some of it out and do not know whether I can make it out.

The Court: Read what you have.

A. (Continuing:) Sign that and become a dues-paying member of the organization of this city. They are banded together to carry on this fight. The dues are 25 cents per month. If you join us, you add your strength, you add your ability to carry on this fight and bring it to a successful issue. That is the work that is now  
the most important for the working class of this community.

168 to organize and sweep the present capitalist system with its autocracy, with its political Czars, with its abolition of free speech, with its refusal to abide by the Constitution of the United States—sweep this out of existence at the ballot box, and establish a working class movement—a working class government as Russia has already done.

For the benefit of the ruling class of the city of Cleveland, I am here to say this afternoon that when the workers of Russia learn of the action of the government of this country in refusing passports to Morris Hillquist, Victor Berger and Algernon Lee as delegates to the International socialist conference.

(Referring to place on witness' notes.) The reason that is scratched out is this: some times I could not hear the speaker distinctly and after I got a few words more I saw I must have misunderstood him and scratched it out. The next I have here is:

They will assemble before the American embassy and demonstrate against autocracy as they did when they heard that the capitalist class of this country intended to murder Mooney in San Francisco. I again say that if word could be sent through the censorship, through the Enes which to-day are the means of communication with Russia, that this afternoon in the city of Cleveland a socialist was arrested

for speaking to the public in support of peace and against  
 169 conscription, that those Russian workers would send Mr.  
 Root back to America quicker than he went. (Loud ap-  
 plause.) For the socialists do not stand for a false democracy.  
 The working class of Europe does not prate about democracy and  
 then use autocracy to prevent free speech and free assemblage.  
 The socialist party stands for the right of every man to fully and  
 freely express his views, for the right which the Constitution of this  
 country says the people of this country have, and for the further  
 right which the Declaration of Independence says is the right of  
 every people, when any government does not conserve life, and  
 liberty and happiness, it is the right of the people to alter and  
 change such government. (Applause.)

The socialist party believes that a government which is elected  
 on a mandate of "He kept us out of war" and then declares war,  
 a government which, in defiance of the Constitution (applause),  
 and—

(Mr. Sharts refers to a place in the witness' notes.) The part  
 Mr. Sharts is referring to is right here "it is the right of the people  
 to alter and change such government" (applause), and then the  
 next I have is "The socialist party," and I have a couple of words  
 there scratched out at the time I took them. I don't know what  
 they were.

The Court: You cannot remember what it is?

The Witness: I cannot read it. It is scratched out.

170 A. (Continuing:) The socialist party believes that a  
 government which is elected on a mandate of "He kept us  
 out of war" (applause) and then declared war, a govern- which,  
 in defiance of the Constitution and in defiance of the historical  
 liberties of this people, puts a conscription law on the statute books—  
 that it is the duty of the people to organize their political power  
 to alter and change that government. And that is what we propose,  
 if every socialist in Cleveland has to serve a term in jail as the  
 price of doing it.

My friends, I have talked down the band and I have talked  
 down the life and drum, and so, as a closing word to you, go forth  
 in the city of Cleveland and spread the word, spread the news of  
 what has happened here this afternoon. Spread the message of  
 socialism. Let it ring forth in every nook and corner of this com-  
 munity. Let every working man and woman hear this message,  
 and then all of you—all of you who believe in freedom and democ-  
 racy come to the mass meeting next Sunday on Market Square,  
 Lorain and West 25th, and let us show the government and the  
 autocrats where the people of the city of Cleveland stand in this  
 matter. I thank you.

Mr. Wertz: Mr. Sharts insists on the original notes as to the  
 other matter.

The Court: How long will it take to get your notes?

171 The Witness: It will take me five minutes to get over  
 there and it may take me five or ten minutes, maybe a little  
 more than that, to get them.

Mr. Wertz: We have one more witness to put on for a few questions—

The Court: You can get your notes?

The Witness: I am not dead certain that I can get them.

The Court: I am not of the opinion that your transcript is not competent even without your notes, but the objection has been made, and you will find if the notes are in existence and, if they are, produce them.

72 The life and drum corps were at the recruiting station on the Square. The old soldiers were gathered there and were playing at the same time this socialist meeting was going on. That the socialist meeting was started, and they were part way through before I first heard the life and drum corps playing. They were playing "The Star Spangled Banner."

(The witness was excused to go to his office and get his shorthand notes covering the conversation at the police station and another witness was called.)

73 Thereupon the Government, further to maintain the issues upon its part, called as a witness in its behalf, CHARLES E. WOODY, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wertz:

My name is Charles De Woody and I am Special Agent of the Department of Justice. As a part of my duties, I caused the minutes of a meeting on the 27th of May to be taken down in shorthand by Franklin Farasey. I was present at that meeting. I have been here in the court room and heard these speeches read. The portion of it that I heard was correct, according to my recollection, was not there on the 20th of May.

(No cross examination.)

74 Thereupon the witness, FRANKLIN H. FARASEY, resumed the witness stand and further testified as follows:

Mr. Sharts: If I have failed to do so, I want to interpose my objection at this time to the introduction of that evidence. I think I have already stated the grounds.

The Court: Yes. I will give the jury an instruction before it goes in, but your objection to its introduction as a whole will be overruled. There may be individual parts of it that may raise a separate ground upon those you have stated.

(To the Jury) Gentlemen of the Jury: As I am advised, the testimony which it is now proposed to offer and which the Court will permit to be introduced in part, if not in whole, relates to a transaction in which Mr. Wagenknecht only was a party and present at the time it transpired. I am charging you that that evidence is not to be received and weighed by you for any purpose against the de-



pendants Baker and Ruthenberg, that it is to be received and weighed by you as against Wagenknecht only as baring upon his intent and motive in the remarks and conduct which the evidence may tend to provide that he indulged in or entered upon on the 27th of May in the presence, as the evidence tends to prove, of Mr. Schue.

175 I have been able in part to find my notes which I took of the conversation that Mr. Lind and Mr. De Woody had with Mr. Wagenknecht at the jail. At the time I prepared this transcript I had the complete notes. As to the reason I cannot find the complete notes now, in the first place, it was not a full transcript of all that was said. I was in the Police Station and there had been quite a bit of talk there and Mr. De Woody turned to me and said: "I wish you would take it down" in an undertone, and I had a folded newspaper, and I took quite a bit on the newspaper, and I think I had a letter in my pocket, and I took some of it on that, and Mr. Wagenknecht turned around and said something about taking the notes, and then I sat down and took them on these papers.

The Court: What part of it is it that you do not have your original notes for—the part you took on the newspaper and on the letter?

The Witness: Yes sir.

The Court: Have you made diligent search to find such parts?

The Witness: Yes, sir.

The Court: With what result?

The Witness: I have not been able to find that part.

The Court: What has become of that part of your notes?

The Witness: I cannot tell you.

The Court: Have you searched in every place where they  
176 probably would be?

The Witness: Hastily, yes.

The Court: Have you any reason to believe that a further search would produce them?

The Witness: No, I have not.

The Court: Did you make a transcript of them before you lost or destroyed part of your notes?

The Witness: Yes sir.

The Court: Were those notes correctly taken at the time?

The Witness: Yes sir, to the best of my ability.

The Court: What as to the transcript that was made from that part of your notes which are missing—was that correctly made?

The Witness: That was correctly made.

The Court: Have you seen the transcript?

The Witness: Yes sir.

The Court: How long after the incident was it that you made the transcript?

The Witness: I just had time to have supper, about an hour or an hour and a half.

The Court: With that preliminary examination, I will rule that he may use such part of his notes that he has here and the transcript made under those circumstances for the part of it as to which he cannot produce his notes.



Mr. Sharts: Enter our exception.

Mr. Wertz: I would like you to read pages 7, 8, and 9, marked in this transcript.

177 The Court: The question is as to whether there was said at that time and place things that are shown in that transcript.

A. 7, 8 and 9?

Q. Yes, down to the blue mark.

Mr. Sharts: Before you read, let me ask, is this the part you had no notes for?

The Witness: I will tell you in a minute. The first I have notes of is, "Mr. Lind."

Mr. Sharts: I want to enter an exception to his reading from his transcript any part that he does have his original notes for.

Mr. Wertz: That is about the fourth or fifth page.

The Witness: (Reads.)

"Mr. Lind: How long have you been in Cleveland?"

"Mr. Wagenknecht: In Cleveland? You mean live here or lately been here?"

Q. Where did this conversation take place?

A. In the police station.

Q. When?

A. The same day that the speech was made in the Square. I think that was on May 27th.

Q. Who was present?

A. Chief of Police Rowe, Inspector Smith.

Q. Mr. De Woody?

A. Mr. De Woody, I think Captain Martinec, and myself.

Q. Which one of the defendants?

178 A. Mr. Wagenknecht was the only one in the room at that time.

Q. Now, go ahead and read what you have.

A. (Reads.)

"Mr. Lind: How long have you been in Cleveland.

Mr. Wagenknecht: In Cleveland? You mean live here or lately been here?

Mr. Lind: Lived here.

Mr. Wagenknecht: Well, I have lived here for twenty years, I went out west and then came back here. Do you want to know the whole time, or just the latter part of my stay?

Mr. Lind: Yes.

Mr. Wagenknecht: Well, I've been in Cleveland since 1917, 1913, I believe.

Mr. Lind: Four years?

Mr. Wagenknecht: Yes.

Mr. Lind: You are a citizen, of course?

Mr. Wagenknecht: Sure.

Mr. De Woody: Where do you vote, Mr. Wagenknecht?

Mr. Wagenknecht: Well, I voted in Lakewood.

Mr. De Woody: Is that your residence, 1291 Cook Avenue?

Mr. Wagenknecht: Yes.

Mr. De Woody: Who lives there with you? Your family?

Mr. Wagenknecht: Yes.

Mr. Lind: This fellow, what's his name, here, kind of upset the dope, didn't he?

Mr. Wagenknecht: Hayes?

Mr. Lind: Yes.

179 Mr. Wagenknecht: Well, he has been a little away from the Party activities, and he didn't understand the Party. He has taken the same stand that the labor unions generally have taken.

Mr. Lind: Well, he, in other words, doesn't believe that the right of free speech goes as far as you do. He evidently doesn't believe in advocating the violation of the law, and that's where he differs from you.

Mr. Wagenknecht: Yes.

Mr. Lind: You advised them over there this afternoon that there was two things they could do, either register and go to war or else refuse to register and go to jail? You said that over there, didn't you?

Mr. Wagenknecht: Now, I'm not saying if I said that at all. You heard what I said.

Mr. Lind: Well, I am just asking you.

Mr. Wagenknecht: Well, I am not answering.

Mr. De Woody: Where were you born?

Mr. Wagenknecht: I was born in Germany.

Mr. De Woody: Germany?

Mr. Wagenknecht: Yes.

Mr. De Woody: How long did you live in Germany?

Mr. Wagenknecht: A year and a quarter or a year and a half, something like that.

Mr. De Woody: And were you then brought to the United States?

Mr. Wagenknecht: Yes, I was brought to the United States.

180 What is your name?

Mr. De Woody: De Woody is my name.

Mr. Wagenknecht: I am glad to meet you. You were taking short hand notes this afternoon?

Mr. Lind: No, this is the man you were referring to.

Mr. Wagenknecht: Well what's the charge?

Mr. Lind: What's the charge against you?

Mr. Wagenknecht: Yes.

Mr. Wertz: I think that is all we care for.

Cross-examination.

By Mr. Sharts:

All of the things that I have read are some of the notes that I took on that newspaper and on that back of an envelope, unless it would be that there is another sheet I do not find. I do not know what charge was preferred against Mr. Wagenknecht at the police station at the time he was arrested, or if there was any at all.

I used the Success system of shorthand. It is based on the Ben Pitman system. It follows the old Ben Pitman system of positions

above, on and below the line. If a mark is above the line, it represents a certain vowel, if it is on the line, it represents another vowel, and if it is below the line, it represents still a third vowel. If the mark is made above the line, it may mean "ah," if it is on the line "oh" if it is under the line "uh." In order to take this system properly, you should have ruled lines. That is the ideal way to take it. However, it is not necessary. When you do not have lined paper,

181 you would find your position by the word immediately preceding. That is, you would throw your next mark a little higher up, if you wished to indicate the first position, and, if you wished to change the vowel a little below. That is the method by which I indicate the vowel sounds, and read the notes afterwards. If it is above that imaginary line, it means one vowel to me, and if it is below, it means another.

I recall the speech of Mr. Wagenknecht that I took. I will give you the reason, if you wish. It is because he referred to me so particularly and there was a large crowd, a tremendous crowd. We got there, in the first place, very late, and we had to elbow our way through the crowd, and we seemed to be the subject of interest of most everybody there, and I think I recall everything that happened or occurred there. After he called attention to me and drew the eyes of the crowd upon me, I certainly was struck with that particular part of his remarks. He did not embarrass me or put me in an embarrassing position. I would call it rather conspicuous, more conspicuous than I like to be. I mean there were lots of other places I would rather have been right at that time than right there.

We stood to east and south of the speaker, I would say from ten to fifteen feet. Maybe it is twenty and maybe it is eighteen. This occurred in the Public Square. Mr. Wagenknecht was speaking from the rostrum, that is, about the southerly end of the American

182 Trust Building. If the southerly side of the American Trust Building were to be projected out, I think it would be about on that line, and also about on a line with the westerly part of the recruiting station, if that were to be projected. With reference to the Tom Johnson statue down there, the statue was with its back to us. I cannot tell you of my own knowledge how much of a crowd was there. I saw the crowd in going in, not after that. I would say there were probably 3000 people there. I may be away off on that. They stretched out about just up to the sidewalk. I think the sidewalk was clear. I think the rostrum is about five or six feet in from the sidewalk. The crowd was all in front, and either side of the platform.

I took down Mr. Hayes' remarks in part, not all. When I was taking down Mr. Wagenknecht's remarks, he was standing on the rostrum and facing in toward Tom Johnson's Statue. If anything, I was slightly to the platform's right, but almost directly in front of him. I went with Mr. De Woody. We stood in front of the Marshall Building, and later on I looked up and saw Mr. Lind, and also there were a couple of police officers there. I am sure this was the meeting of May 27th. After Mr. Hayes had finished speaking, the next speaker followed him immediately. My memory is that he was

introduced by the chairman of the meeting, who Mr. Wagenknecht said was Mr. Hitchcock. Mr. Hitchcock didn't talk for any time.

When Mr. Wagenknecht began to talk he faced about in the direction of the Tom Johnson Statute. The crowd extended  
183 in front, and on his left hand and on his right hand. As he talked, he did not talk entirely in one direction. He would just turn slightly to either side. He would throw his voice in that direction for a while and then in this direction (indicating). He spoke, I would say, 99 per cent of his words almost directly in front of him. This crowd was all around. I was packed in there very tight. The crowd was demonstrative during the time I was taking the notes of Mr. Wagenknecht's speech. They were applauding. I omitted to read the applause notes as I was giving Mr. Wagenknecht's speech. I have those notes. Upon examining the notes I find he was interrupted by applause eight times. I cannot tell you how long he spoke. As just a rough guess, I would say from ten to fifteen minutes. I would not say he was interrupted with the applause. The applause would come when he would pause himself at the end of a sentence or at a stopping place. I cannot say that he ever was really interrupted, but possibly once, when his voice was drowned out by applause. He may have been talking at other times when the applause was going on, but I think it was more often that the speaker reach a stopping place and then the applause would follow.

I got my first training in shorthand at the Spencerian School here in Cleveland. I think it was the year 1910. I was twenty years old then. I am now almost 27. I spent a year at the Spencerian, and then I studied by correspondence through the Success School for  
184 another year. That was two years. At that time I was with the Secretary of State. Then I quit my position with the Secretary of State and went to Chicago and finished there at Chicago at the Success School. That is the third year. I began taking shorthand of speeches five years ago. It is very seldom I reported speeches before I started to work as a court stenographer. I did, however, report President Wilson's speech, and I reported various speeches for the Constitutional Convention of Ohio for my own self and for friends of mine and for practice. I think I reported most of them for the Secretary of State of Ohio. I have been engaged in the work of shorthand steadily ever since. I have worked at shorthand for seven years. About five years ago I started reporting. In this county we have no official stenographers, so that I cannot say that I have ever held a position of court stenographer. In Cuyahoga County each stenographer operates in a similar fashion to attorneys; that is, he maintains his own office and his own office force and is employed directly by the attorneys and paid by their clients, not by the court or the county or the city. I have been doing court room work for five years, exclusively here in Cuyahoga County, in all courts except this one. I am not working for any one right at this minute. I have done quite a little work for the Coach Detective Agency. I think I have done work for possibly five or six different detective agencies in different parts of the country.

My attention was first called to the job of reporting these men when I got home on the Saturday night before that. There  
 185 was a call there that my mother had left for me, on the telephone, and I called up that number, and it was Mr. De Woody, and he asked me what I was going to do the next day and if I would report these speeches for the Department of Justice. I had met Mr. DeWoody before, but had not done work for him before. He never made any previous arrangements with me. When I went to work to report this meeting, I arrived at Marshall's at about a quarter to two, and when I started to take the speeches, it was almost an hour later. I am not certain about that. At that time there was a large crowd and I had to work my way through the crowd. When I started to take notes, I did not have anything to rest my book on. I just stood there with a book in one hand and worked that way. At first people were pressing against me, I do not think at any time that I had to ask anyone what the speaker said. I do remember that at one time during the speeches, I turned around to Mr. DeWoody, I think, and asked him what the speaker said, and he said he did not get it. My recollection is that the crowd started to applaud before the speaker had finished his sentence and I did not hear it that time. I have given a literal rendering of Mr. Wagenknecht's speech as I heard it. There is nothing in my notes to indicate the place where I could not hear what he was saying. My recollection is that I just omitted the place where I did not hear.

I also reported the speech of Mr. Ruthenberg. There are a number of places in my notes where I have drawn a line through parts of the notes that I started to take. That was because of the particularly poor quality of that note that was scratched out.  
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Then I would have to go back and write it over. In the meantime Mr. Ruthenberg was talking right along, but he is a very slow talker. I consider that he is exceptionally slow. I could go back and be writing down what he said and then go and catch up with what he was going on with. Sometimes you will think you understand just what the speaker said and a second later you will find that you did not quite understand it. There are a great number of these through my notes, erasures and then putting something else there. It runs through the notes of all of the speakers, because I was standing up like this (indicating) and working with the arm free, no support for my hand, and in the midst of a large crowd, which was continually bumping me in the front and in the back, and I was writing part of the time with a steel pen and part of the time with a fountain pen, and part of the time I got my book up like this (indicating) and the ink would not flow up the pen, and then I would have to stoop over again until I would get it to flow back again, and then back up again, until I could write better. I was doing that continually during these two speeches. I think at one time I rested my book on Mr. DeWoody. I got along fine until he moved over or something. I will say that those notes are just as I heard the men speak, and just as I put them down.

When I went to the police station I was carrying my note book in my hand, I think. At the police station there was present the

Chief of Police, Inspector Smith, Mr. DeWoody and Mr. Lind. I don't know as there was anyone else. It is my recollection there was no other officer sitting there, but I will not say that for sure. The room in the police station in which I went was the second room away from the Chief's private office. All of these men were not in there surrounding Wagenknecht. Mr. Wagenknecht was standing. Mr. Lind was sitting at a desk. The others were walking around the room, or sitting down. Mr. DeWoody asked him some question, and also Mr. Lind. One would ask him and then another would ask him and so on. My notes show that. When I came in, I think I sat down. I think I was there before Mr. Wagenknecht came in, that is, in the room before he came in that room. After the arrest I remained to take Mr. Ruthenberg's speech before I went down to the station. I do not think the Chief of Police asked any question. I have no recollection that Inspector Smith asked any. When I was taking notes on the newspaper I had it in my hand rolled up and was writing along the margin of the paper, holding it in one hand. There were no lines on it at all. When I had exhausted that margin, I pulled out an envelope and just used the back of that. There were no lines on the envelope. I just held it in my hand. I do not think it was a stiff envelope. I think it was just a plain ordinary envelope. I completely used that up. By that time I discovered Mr. Wagenknecht knew I was taking notes and I no longer made any concealment of it.

There were times when I was taking the speeches when the ink would refuse to flow from my pen and at those times I had to bend over and then it immediately began to flow. I did not have any delay when it failed to flow. I never had an experience of that kind before. I was working under very unusual difficulties, the most difficult I have ever experienced.

Mr. Wertz: We rest.

The Court: The general denial tendered by the District Attorney this afternoon I will permit to be filed in accordance with the leave that was asked and given yesterday, Mr. Sharts. I have had the stenographer transcribe what occurred. You may have an exception.

Mr. Sharts: Our exceptions are in.

(Adjournment to July 20, 1917, 9:00 A. M.)

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(July 20, 1917—9:00 A. M.)

Mr. Wertz: The Government rests.

Mr. Sharts: If your Honor please, I wish at this time to make a motion to have the Court take the case from the jury and instruct a verdict for the defense upon the ground that the Government has failed to establish all of the essential facts of the indictment. I base my contention chiefly upon this fact: it is an established rule of evidence that the uncorroborated testimony of an accomplice is not sufficient to convict. In this case we have had an abundance of tes-

timony regarding speeches that were made. We have had abundant testimony of a leaflet that was circulated prior to the passing of this Act. There has been abundant testimony along these lines, but, when it comes to the specific offense charged in the indictment, that these men aided, abetted, counseled, and procured Mr. Schue to fail to register, we have absolutely nothing to support his statement, either that he was there, or that he was influenced. He says he was there. He has given a few extracts, garbled phrases or extracts of speeches that he had heard, and claims that he had heard, and he says that he was influenced by that to refuse to register. Here was a man who lived here, and as he said, had been born in this city, was a machinist, was presumed to have some acquaintances, and he attended the meetings, he says, of May 20th and May 27th, and he stood there, on the latter occasion for something like two  
 190 hours. On neither of these occasions could he name a single man that he had met who could corroborate his statement that he was there, nor could the Government produce a single person who could bear him out in his statement that he was there, so that, from the essential fact of this indictment, the aiding, abetting, and counseling of Mr. Schue not to register, there is absolutely nothing but his unsupported word.

Now, I maintain that, in his undertaking to show that he was there even, he has indicated a number of things that would tend to the conclusion that he was not there. He estimated the crowd on the first occasion to be—he said that he could not say whether it was 100 or 500 people—and you have heard the testimony of the officer who was there, Mr. Stucky, that there were about 1500 people, and it was otherwise estimated at about 2,000 people. It seems to me also that in his inability to say exactly about the other meetings that were being held upon the Square at the time he showed a remarkable vagueness of recollection, and altogether his story was one that could be very easily devised for the purpose of obtaining his own release from the punishment for his offense. I think it could be very easily constructed, that story, the details, so far as he gave them, and so I will rest my motion chiefly upon that ground. I claim, however, that the Government has failed entirely to  
 191 show that these men have in their speeches or in any other way

used language that to any reasonable mind would have been a request for them or a solicitation for them not to register.

Thereupon the motion was argued to the court, and the court, upon consideration thereof, overruled the same, to which action of the court the defendants duly excepted.

192 Thereupon the defendants, to maintain the issues upon their part, called as a witness in their behalf, AMOS L. HITCHCOCK, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Amos Linden Hitchcock. I will be forty-one this Fall. My occupation, carpenter. I was born on Put-in-Bay Island  
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in Ottawa county, this state. I have been all over the United States since then. I have lived in the city of Cleveland since 1903.

I attended a meeting on the Public Square in the month of May in which Charles Baker was a speaker. That was at the rostrum on the Public Square adjacent to the recruiting booth there now. The recruiting booth was not there at that time. When Mr. Baker was speaking at that meeting, I was kind of circulating around the crowd. At no time except for a few minutes was I anywhere close to the rostrum that day. I heard only part of his speech. I do not recall the particular part in which he discussed conscription and registration. There were several hundred people in the crowd. It was a rainy day, and, of course, the crowd was small. We stood in the rain. I believe I attended a meeting on May 13th. If that was on a Sunday and there was a meeting on the Public Square, I was there. I do not recall Mr. Baker speaking on the Public Square except that once. I attended a meeting later on the Public Square on the Sunday after Baker spoke. As near as I can recall that was the 27th of May. I was chairman of that meeting.

193 The speakers were Max Hayes, Ruthenberg and Wagenknecht. Max Hayes spoke first. After him Wagenknecht and following him, to the adjournment, Mr. Ruthenberg. I remained throughout the entire meeting. I was within arm's length of the speakers at that meeting. In my judgment, there were probably three or four thousand in the crowd at that time. The crowd was standing entirely around the rostrum. Both of them were on the park side, the Square side. There were some back of the rostrum on the sidewalk. When Mr. Wagenknecht was speaking, he faced to the east. Max Hayes was speaking when we arrived there. I was a little bit tardy and Hayes was a little bit early, and on account of there only being one rostrum, he started the meeting early in order to hold that rostrum. There was another party who had been using it right along and we wanted that time. The other party was some man talking on a religious feature that he was fostering in Benton Harbor, Michigan. There was no other meeting going on at the time that our meeting was being held. At the recruiting booth which had been built just previous there was music and a speaker spoke for a few minutes. The music was fife and drum music. That was the only other meeting that I noticed. It was while Ruthenberg was speaking this music started up.

Q. I wish you would state now what you heard Mr. Wagenknecht say? Give as clear a summary of his talk as you can, of what he discussed and the effect it made upon you, what you remember?

The Court: I do not think you mean the effect, but, as I  
194 interpret your question, it is for the witness to state literally, if he can, and, if not, the exact substance so far as he can now recall it, what he said.

A. This matter of remembering those things strikes people differently. I am used to attending these meetings, and I hear prac-



tically the same thing a great many times and do not pay so very much attention to it. I had duties to perform at that meeting and I knew practically what the man was going to talk about, that is, in a degree, and I do not pay so very much attention to their exact words. The purpose of our going there was in opposition to the war, and we were in a campaign—

The Court: Just a moment. He is beyond your question.

Q. I wish you would try to state what you heard Mr. Wagenknecht say. I do not suppose you can give the exact words, I do not ask it of you where you cannot—give the line of his argument and discussion.

The Court: Give the substance of what he said.

A. He, of course, made the assertions that we were there in the interests of peace, that we did not want war, and that we were going to continue fighting until peace was attained. That was the substance of what he said, as near as I can recall.

Q. What did he say about registration?

A. He did not like the registration and believed that it ought to be repealed.

Q. Did he use the word "repealed"?

195 A. He might not or might have said "repealed," but whatever term he used was to that effect, until Congress rescinded it or until it was repealed, or words to that effect.

Q. Did he advise anybody to register or not to register?

A. Not that I recall, no advice of that character.

Q. No advice of that character?

A. No, sir.

Q. Did he advise any opposition to the conscription law in the way of refusing to obey the law?

A. No, sir.

Mr. Wertz: If the Court please, I would like to interpose an objection here. He should ask what was said or done there.

The Court: Yes. Both last questions were objectionable. I will sustain the objection.

Mr. Wagenknecht spoke from a few minutes to four until a few minutes past four. There was a stenographer in the crowd. He stood almost in front of the rostrum, possibly 15 feet away, maybe not so far. I did not take particular observation of him, while Mr. Wagenknecht was talking. In fact, I could not see him except when I was on top of the rostrum. There were a number of police officers around at the time. I am not acquainted with Mr. Lind, the police prosecutor. Mr. Wagenknecht's speech ended abruptly. I do not recall his exact words but it was in opposition to the conscription, wherein he said that the only way they had of registering protest was either by observing the law or not, it was optional with them, it was up to you, and at that time an officer came around the back of the rostrum and just wiggled his finger, and that ended it. After Mr. Wagenknecht was arrested,

196 I was very busy. Part of the audience undertook to follow the officer and Wagenknecht away and my duties then was to get them back there to their meeting and to advise them not to leave the place but to remain and hear the next speaker.

The next speaker was Mr. Ruthenberg. He began to talk about four o'clock or a few moments after. He talked probably forty or forty-five minutes. During that time I did not notice the stenographer. While Mr. Ruthenberg was talking I gave no more close attention than I did to the previous speaker. There are only a few things that I recall particularly of his talk. The first was that he was going to make his speech as he had intended regardless of the fact that the former speaker had been arrested, and he went into the constitution, quoted from that and quoted from a speech Daniel Webster made in regard to the draft law during the Civil War. He made a long speech there. I could not recall that speech. With regard to registration, he said that he himself would not register. I could not say what else he said about it, I would not attempt to try to repeat what he said because I do not recall it clear enough. I cannot give anything further in his speech that I could be sure of.

Cross-examination.

By Mr. Wertz:

I heard Mr. Wagenknecht give no advice as to registration. I was present on the 13th at the hall where the resolution was adopted.

197 Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf, WALTER F. BRONSTRUP, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Walter F. Bronstrup. My occupation is that of electrician. My age is 33. I was born in Cincinnati, Ohio, I am a resident of Cleveland, and have lived here since May, 1910. I was present at all the meetings on the Public Square in the month of May. I recall a meeting at which Mr. Baker spoke. I was in the crowd next to the rostrum, at the side. While Mr. Baker was speaking, I gave close attention to what he said. I cannot give his speech in words but the sense of his speech. I never tried to recall the speaker's exact words.

Q. Go ahead.

A. The meeting that Charles Baker, of Hamilton, spoke at upon the Square, as near as I can remember, Comrade Baker spoke against this country entering into the European War, give the cause of the war, and give the socialists' standpoint, the cure for wars, and he stated that he, being of conscription age, would refuse to be conscripted.

Q. What did he say about registration?

A. He told the people that there was a law to be passed on registration, that it was up to them to obey it or not to obey it, as they saw fit.

Q. Is that all he said on that subject?

A. Oh, he elaborated on the argument but that was the sense of his argument.

Q. State what advice he gave to the crowd with regard to registering or not registering of young men of registration age?

A. He gave them no advice, if I recall correctly, whether they should register or not register. It was left up to the individual. Baker had to, as a socialist speaker, abide by the decision of the Socialist Party.

The Court: Baker had to, as a socialist speaker, to abide by the decision of the Socialist Party?

The Witness: Yes.

Q. Can you go further with your recollection of his speech?

A. That was the sense of his speech; that is all that I recall.

As to whether there is anything further that I can recall on that subject or the incidents of that meeting, I recall who the speakers were, but that is all of importance of any of the argument. Mr. Baker began speaking about a quarter past three or half past three. He must have talked for an hour. During that time we had a crowd that I should judge would be close to 3,500 people. It was clear rather at the time. The only noise that interfered with the speaker or the speaking or hearing of any of the speeches was applause. There was frequent applause. At times it lasted for a few minutes and at times only a burst. The street cars were running but if one was close enough to the speaker they do not interfere. A man standing ten feet away could not hear all the time. I did not observe any police prosecutor or officer of that sort that I know of in the crowd.

I was present at another meeting in the Public Square later than the Baker meeting. I was present the following meeting and a previous meeting. The week following the speakers were Hayes and Wagenknecht and Ruthenberg. Hayes was talking before I came. I got there at 2:30. I did not hear any part of his speech. I arrived just before Hayes got down off of the platform. I heard Wagenknecht's speech. While Wagenknecht talked I was standing about ten feet in back of the rostrum. During the time he was talking at times I could not hear all of it. I did not pay much attention to Comrade Wagenknecht's talk, but from the drift that I heard, it was that he spoke against conscription. The advice that he gave to the crowd in regard to registration was that it was up to the individual to register if he wished to or not. I did not pay much attention to what he said in regard to conscription. I don't know whether he mentioned conscription. I cannot recall anything else he said. After his remarks the police officer walked up to the rostrum and asked him or seemingly asked him to come down off of the rostrum. Anyway, he got down and the police officer took him out of the crowd. Almost a riot followed his removal. When Comrade Wagen-

knecht was taken off of the rostrum by the policeman it seems as though the crowd resented his arrest and they rushed after the police, and the chairman of the meeting jumped on the rostrum and advised and hollered at the crowd there through a magaphone

200 to remain here, to leave Wagenknecht go to the police station, that this was their meeting and for them to be quiet and come back and listen to the other speakers. After that the chairman announced the next speaker who was Ruthenberg. Mr. Ruthenberg first called the attention of the crowd to the act that was just committed. He cited that it was in violation of our constitutional rights, the right of free speech, and then proceeded on a lecture giving the cause and horrors of war and the socialist position as to conscription. He stated that the position was that the Socialist Party was opposed to all wars and that the Socialist Party, that is, the members of the Socialist Party would not be conscripted, that is, those that held the Socialist Party dear, and he stated that he personally as an individual would rather be shot than to be conscripted. As to what he said about registering, he left it up to the individual to register or not to register. That is all I recall of his remarks at present. I am almost certain that there was a religious meeting being held on the other corner of the Square at that time. There were other sounds made by the street cars, and the recruiting station had some music by a life and drum corps. It was playing during Ruthenberg's talk.

I noticed a stenographer while I was there. He stood to the left of the speaker. I noticed that he was taking notes and talking to some other individual—two, one on each side of him. I noticed him

201 talking to them about four or five times during the meeting. (Mr. Schue stands up.) I never saw that man (indicating defendant Schue). I did not see him at either of those meetings.

Cross-examination.

By Mr. Wertz:

I am an active socialist and I attended all of the meetings. As to the meeting on the 27th, on the occasion when Mr. Wagenknecht was placed under arrest, I could not hear all of it. I remember some of his remarks against conscription. The impression Mr. Wagenknecht left with me was that it was up to the individual if they wanted to register or not. That is the impression both of them left. I have told all I remember of these different speeches at that time.

I do not recall that Ruthenberg said in his speech: "We need only to look at the newspapers and their hysterical appeals to the people to register for conscription. They are trying everything under the sun. They are doing all in their power through the Billy Sunday form of revivalism to induce you to register for conscription. They are afraid." I do not recall Ruthenberg's saying: "They are afraid that the working class of this community may on registration day enact their own referendum in regard to this law by refusing to register."

I do not recall that Mr. Ruthenberg said: "What is to be the posi-

tion of the working class of this nation in regard to war and registration for conscription?"

202 I do not recall his saying immediately following the above: "Are we in this country, having been bludgeoned—no other word describes it—having been forced into the war against our will, against our wishes and in violation of the mandate on which the President and Congress was elected—are we to meekly submit and lie down and permit the ruling classes to do its evil, base, dirty work?"

I said in regard to Mr. Baker that I knew that Baker did not say anything against conscription because Baker had to, as a socialist speaker, abide by the decision of the Socialist Party. What I mean by this is, that when we send out speakers they have got to abide by the constitution and by-laws adopted by the Socialist Party; otherwise they would be recalled. That does not include resolutions adopted by the Socialist Party.

I cannot find anything in the by-laws of the Socialist Party that prevents Baker from making a speech against registration and conscription.

I have heard of the resolution that was adopted on the 13th of May: "Resolved, by the Socialist Party in joint meeting assembled, that we denounce the law proposing 'involuntary servitude,' in violation of the 13th Amendment of the Constitution of the United States, in the form of conscription to murder our fellow human beings in other lands, and recommend to and urge all members of the Party, and the workers generally, that they refuse to register for conscription and pledge to them our financial and moral support in their refusal to become the victims of the ruling class." That

203 resolution was not binding on Comrade Baker. I do not recall whether this resolution was mentioned in the speaking of Baker, of Wagenknecht or Ruthenberg.

I do not recall this in Mr. Ruthenberg's speech: "And, further, we of the Socialist Party have taken a certain definite position in regard to conscription. We have taken this position, that the 13th Amendment to the Constitution of the United States forbids involuntary servitude, forbids the Congress of this country to enact any laws which are intended to force submission of the people to involuntary servitude. And we take the position that when Congress enacts a law which is a violation of the fundamental law of the nation and the ruling class enforces that law through the courts which it controls, then the only way that the people can show that they do not intend to have their freedom and their rights trampled under foot is by refusing to submit to that law." I suppose that possibly that was stated. If those are the reports of the meeting, I suppose I did hear that in substance.

As to the following language, I remember statements similar to that made by Mr. Ruthenberg. It was in that speech, but whether at the Square or some place else I do not know; "And so the Socialist party of the City of Cleveland by resolution has gone on record as urging and recommending to every worker who is inspired by a belief in humanity, to every worker who believes that wholesale murder is

just as wrong as the murder of an individual—as urging and  
 204 recommending to every worker who does not desire to take a  
 gun and shoot down his fellow human beings, no matter  
 whether they are being called Germans or Austrians or Russians  
 or English—whatever their nationality may be—we have said to  
 those workers by official action of the Socialist Party that we urge  
 and recommend that they refuse to be registered for conscription.”

I do not remember hearing the following statement: “My friends,  
 I am ready to say more: That if this law is amended, if later, after  
 the workers who are to be drafted have been sent to the trenches of  
 Europe and have been mowed down by the millions against the  
 socialists on the battle fields of Europe, if, after the first million or  
 two of the flower of the humanity of this country has become the  
 victims of the ruling class in their insensate greed and desire to  
 make profits, if they have become pulsating masses of human flesh,  
 and then Congress amends this law to draft men of greater ages into  
 the army, and those ages include mine, then I shall refuse to become  
 the victim of the ruling class and be conscripted.” I may have  
 heard it in substance; I don’t remember.

I do not recall the following statement or the substance of it:  
 “I think I have made our position in regard to conscription, and in  
 regard to the war, as clear as it can be made. I tell you as frankly  
 and as openly as I possibly can that we socialists do not intend to do  
 this work of murder. I would be saying little to you if I left  
 205 you only with this message. If I only told you that we  
 socialists did not intend to register for conscription, if I told  
 you only we socialists are opposed to the war, then my message would  
 not be complete. What are we to do? What are we to do? What  
 have we the power to do? My friends, let me say first and foremost  
 that the one thing which we must not do in this crisis—we of the  
 working class must not resort to any kind of force. Let us willingly  
 and gladly go to jail rather than to the trenches.”

I do not recall this statement: “Come over to Market Square at  
 Lorain and 25th and we will again present to you the facts of the  
 betrayal of the people of this country by its servants in declaring  
 war and placing a conscription law on the statute books.”

I do not recall the following statement in Mr. Wagenknecht’s  
 speech: “Comrade Hayes has given you his version of this question  
 of conscription. It happens, however, that our friend Hayes’ version  
 does not quite agree with the official action of the Socialist Party  
 of the United States, and, not agreeing with the official action of the  
 Socialist Party of the United States, we must say this afternoon Max  
 Hayes does not speak for the Socialist Party. The Socialist Party  
 has taken a very definite and decided stand upon this matter of  
 registration for conscription.”

I did not learn that Max Hayes had advised the audience that it  
 was their duty as American citizens to obey that law and register  
 under it, prior to the speech of Wagenknecht. I heard it later.  
 206 Whether it is the truth or not, I could not say; I wasn’t  
 there; I didn’t hear it.

I do not recall the following statement by Mr. Wagenknecht:

"The National Convention of the Socialist Party went on record and declared that it shall be the duty of every dues-paying member of the Socialist Party to fight and fight and fight and fight until there is no more fight left in them against conscription whenever and wherever he can."

I do not recall this in his speech: "And we are going to fight. We don't intend laying down on the job at this time, just because our capitalistic government, controlled by the Rockefellers and Morgans, say to us, 'You shall do so and so.'"

I do not recall this in Mr. Wagenknecht's speech: "Now, the socialists don't care a shoop in hell which capitalistic class is the most powerful in this world. All we care about is that we shall make the working class of every country the most powerful in that country."

I do not recall this of Wagenknecht's speech: "There are two things you can do under any circumstances, when it comes to obeying or disobeying the law, and these two things are these: You can either obey the law made by your masters and grovel in the dust and eat sand for the rest of your life, or you can at last stand up like men and say, 'The time is come when we, through organized power and strength, must say to the capitalists that they cannot any more curtail our rights and our freedom and our liberty.'"

207 I do not recall this statement: "Of course, during this period of change, during this period when the working class is ascending to power, many of us will have to take jail sentences because we were the pioneers, you understand, in this movement for working class liberty, but then somebody has always had to take jail sentences who were pioneers in a movement for the liberty of any people, understand. And so we are willing today to take those jail sentences, and because we are willing—because we are willing to take those jail sentences, we say to you that you have full rights to do one of two things upon this matter of conscription. You can either register and run a chance of being drafted, or you can refuse to register and go to jail."

P. Do you recall that after that statement there was much applause and cries of "Jail, jail" from the audience?

A. No, sir.

Q. Do you remember of the audience calling "Jail, jail" at all during that speech, do you recall that?

A. No, sir, I do not recall.

Q. Do you recall this: "Now, you have a right to go to jail, don't you know? You, brother, don't you know that you have a full right to go to jail if you want to? You have just as much right to refuse to register and go to jail as the government has a right to say that you shall register and go to murder." Then there was loud applause. Do you recall that?

208 A. I do not recall.

Q. Do you recall this? "Well, the question is, of course, you may applaud this afternoon, but after a bit the question will be this: How many of you will have moral courage enough to refuse to register on June 5th; that's the question, friends. The conscription law and its success, understand—the conscription law and



its success depends in a measure upon the fact that thousands upon thousands will refuse to register. Do you know that? A man—a man within the age limits—any man—any young man within the age limits who does not grant the Congress of the United States the right to say that he shall go to war without first giving him a chance to say whether he wants to go or not, such a young man has his first opportunity to make a protest against conscription by refusing to register. That is the first place to protest. There are subsequent ways to protest, but this is the first place to protest." Do you recall that in Wagenknecht's speech?

A. No sir.

Q. Do you recall this being in Mr. Wagenknecht's speech: "Now, then, we are here this afternoon to explain the situation to you. What we say this afternoon is this: That every man has the right to do one of two things; and I want to repeat that. He has the right to do one of two things. He can either refuse to register and run a chance of going to jail—" Do you recall that just before

209 he was arrested?

A. No sir.

Redirect examination.

By Mr. Sharts:

The pamphlet you hand me is the constitution and by-laws of the Socialist Party. The pledge in there is the pledge that is taken by the members of the socialist organization.

Q. I wish you would read that pledge to the jury.

Mr. Wertz: If the court please, I object.

The Court: I sustain the objection to it on the ground of immateriality and irrelevancy.

Mr. Sharts: Enter an exception.

210 Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf, JOHN A. FROMHOLTZ who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is John A. Fromholtz. My age is 29. I was born in Buffalo, N. Y. and lived about twenty years in Buffalo and nine years in Cleveland. I am within the registration age, and have registered. I am acquainted with Mr. Ruthenberg, one of the defendants in this case. I have not consulted Mr. Ruthenberg regarding registration.

I attended meetings on May 20th and May 27th in the Public Square. I recall the speech of Mr. Baker.

Q. I wish you would give us as well as you can the speech of Mr. Baker, what you got from it, the substance of it, as well as you can?

A. As much as I know, the main thing was sort of conscription.



I don't know anything he said I should not register because always——

The Court: Repeat what he said in substance as well as you recollect.

Q. Go ahead.

A. As much as I can say is that he says the Socialist Party was opposed to conscription but there is nothing to hinder me—there is nothing that I know of that he said that the people should not register.

Q. That is, you say that he did not say anything about registration?

211 A. Yes, sir.

I am a member of the Socialist Party. I attended the meeting on May 27th. At the meeting there, Mr. Wagenknecht was chairman, I think, and Mr. Ruthenberg, and, I think, Mr. Hayes were speakers. Mr. Hayes spoke first. He stated pretty nearly the same words as Mr. Baker, that he advised young men to register. I cannot recall the substance of Mr. Wagenknecht's speech. Mr. Ruthenberg said as much as the Socialist Party was against conscription, and not anything as to registration.

Cross-examination.

By Mr. Wertz:

I have been in the witness room today. The boys out there who are witnesses have not been talking over what this law suit was about. I did not discuss with any of them the testimony to be offered on the witness stand. Nobody talked with me about what I was — testify about. I never spoke to Mr. Ruthenberg at all. I just came here this morning. I never talked to their lawyers about it as to what I should say. I did not tell them what I was going to testify to at all. I am in the electrical business. I recall the speech of Max Hayes and that Max Hayes said to the audience over there that while they were opposed to this conscription law, yet that that law required all citizens of this country to register for conscription.

212 and that while that law was on the statute book it was their duty to go and register under that law, and he further told us that while they were opposed to the law, that the proper way to get away from that law was to have that law repealed in Congress, and not to violate that law by refusing to register. I am positive that Max Hayes said that.

Q. Do you recall that Wagenknecht said this, in introducing himself to that audience: "Comrade Hayes has given you his version of this question of conscription. It happens, however, that our friend Hayes does not quite agree with the official action of the Socialist Party of the United States," applause. Do you remember that?

A. I think I remember that sentence.

The Court: You think you do?

The Witness: Yes, sir.

The Court: As made by Mr. Wagenknecht? Do you understand it?

The Witness: Yes, sir.

Q. Do you remember this immediately following: "And, not agreeing with the official action of the Socialist Party of the United States, we will say that this afternoon Max Hayes does not speak for the Socialist Party." Applause?

A. I could not state that I heard that.

Q. Did you hear that in substance?

A. Because at times he was interrupted.

Q. You would not say that it was not said there?

A. No, sir.

Q. Then did you hear this statement immediately following: "The Socialist Party has taken a very definite and decided  
213 stand upon this matter of registration for conscription."

Did you hear that?

A. No, sir.

Q. Did you hear that in substance?

A. No, sir. At times I had to move into the audience in order to hear some sentences.

Q. So that you would not say that it was not said?

A. I would not say.

Q. Did you hear this: "The National Convention of the Socialist Party went on record and declared that it shall be the duty of every dues-paying member of the Socialist Party to fight and fight and fight and fight until there is no more fight left in them against conscription whenever and wherever he can," applause. Do you remember that?

A. I may have heard some of that statement. I could not say for sure, because I just know—my memory is not whole clear on that now.

Q. Do you remember this: "And we are going to fight. We don't intend laying down on the job at this time just because our capitalistic government, controlled by the Rockefellers and the Morgans, say to us, 'You shall do so and so.'"? Do you remember that?

A. I think I remember that. Yes, I remember that sentence.

Q. Then, do you recall this from Comrade Wagenknecht: "There are two things you can do under any circumstances, when it comes to obeying or disobeying the law, and these two things are these: You can either obey the law made by your masters and grovel in  
the dust and eat sand for the rest of your life, or you can at  
214 last stand up like men and say, 'The time has come when we, through organized power and strength, say to the capitalists that they cannot any more curtail our rights and our freedom and our liberty.' " Do you remember that?

A. Yes.

Q. Do you recall this from Wagenknecht: "You can either register and run a chance of being drafted, or you can refuse to register and go to jail." Applause and cries of "Jail, jail." Do you remember that?

A. Yes.

Q. Do you recall that Mr. Wagenknecht made this statement following that: "Now, you have a right to go to jail, don't you know. You, brother, don't you know that you have a full right to go to jail if you want to? You have just as much right to refuse to register and go to jail as the government has the right to say that you shall register and go to murder." Loud applause?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

The Court: Your answer was that you say you recall that as having been said?

The Witness: Yes, sir.

Q. Do you recall this statement by Wagenknecht: "Well, the question is, of course, you may applaud here this afternoon, but after a bit the question will be this: How many of you will have moral courage enough to refuse to register on June 5th?"?

215 A. I could not say that I heard that.

Q. Did you hear that in substance?

A. No, sir.

Q. Does it occur to you that if that was said, the subject of that speech by Wagenknecht was refusing to register instead of conscription?

A. No, because if he stated that and I followed it I would not have registered, and I registered.

Q. So that you did not hear that over there?

A. No, sir.

Q. Do you recall hearing this: "The conscription law and its success, understand—the conscription law and its success, depends in a measure upon the fact that thousands upon thousands will refuse to register." Do you recall that?

A. I do not recall that statement.

Q. Do you recall this statement: "A man within the age limits, any man, any young man within the age limits who does not grant the Congress of the United States the right to say that he shall go to war without first giving him a chance to say whether he wants to go or not, such a young man has his first opportunity to make a protest against conscription by refusing to register. That is the first place to protest." Do you recall that?

A. No, sir.

Q. Do you recall that statement in substance?

A. No, sir, I do not recall it.

Q. Do you say that that statement was not made there by Mr. Wagenknecht?

216 A. I could not say that he made that statement. I did not speak to any person about it. I just moved through the audience at different times. I never stayed one place on account of the difficulty of hearing. Sometimes I got up in front and at other times I was forced back further by other people getting in front of me.

Q. Now, do you recall this in Mr. Ruthenberg's speech: "The capitalist classes are not fighting a war of democracy. The United

States is not fighting a war for democracy. It is fighting a war for commercial imperialism and the profits of the capitalist class of this country." Do you recall that?

A. I do not.

Q. Would you say that it was not said there?

A. I could not say that. I did not speak to any person in regard to that lecture.

The Court: The question is whether Mr. Ruthenberg said that or said that in substance on the 27th of May on the Public Square, according to the best of your recollection?

The Witness: I can say that to my recollection, I cannot recall that statement.

Q. Do you recall this statement in Mr. Ruthenberg's speech: "And, further, we of the Socialist Party have taken a certain definite position in regard to conscription. We have taken this position, that the 13th Amendment to the Constitution of the United States forbids

217 involuntary servitude, forbids the Congress of this country to enact any laws which are intended to force submission of the people to involuntary servitude, and we take the position that when Congress enacts a law which is a violation of a fundamental law of the nation and the ruling class enforces that law through the courts which it controls, then the only way that the people can show that they do not intend to have their freedom and their rights trampled under foot is by refusing to submit to that law. (Applause.)" Do you recall that?

A. I recall that.

Q. "And so the Socialist Party of the City of Cleveland by resolution has gone on record as urging and recommending to every worker who is inspired by a belief in humanity, to every worker who believes that wholesale murder is just as wrong as the murder of an individual—as urging and recommending to every worker who does not desire to take a gun and shoot down his fellow-human beings no matter whether they are being called the Germans, or Austrians, or Russians, or English—whatever their nationality may be—we have said to those workers, by official action of the socialist party that we urge and recommend that they refuse to be registered for conscription."

A. I do not recall that statement at all.

Q. You do not recall that?

A. No sir.

Q. Will you say that it was not said there?

A. I cannot recall anything at all about that.

Q. Do you recall it in substance?

A. All I can recall in the statement is that we were  
218 opposed to wholesale murder, but not as to registration.

Q. But not as to registration? Do you recall this statement by Mr. Ruthenberg? "That if I came between the age provided for in that law, that I would refuse to register for conscription."

A. I do not recall that.

Q. Do you recall Mr. Ruthenberg saying that in substance?

A. I do not recall that.

Q. Do you recall him saying that if this law was amended so that it included his age that he would refuse to become the victim of the ruling class and be conscripted; do you recall that?

A. I cannot recall that either.

Q. Now, you say that the Socialist Party was not opposed to registration?

A. Yes, sir.

I was not up to the Socialist hall on May 13th when the resolution was adopted on the question of conscription. I was out of town. I never saw that resolution.

Redirect examination.

By Mr. Sharts:

I have had no talk with you in regard to this case. I have never talked with Mr. Wolf since or before the trial. I just arrived in town last night.

219 Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf A. E. FROMHOLTZ who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is A. E. Fromholtz. I am thirty-two years of age. I was born in Buffalo. I have been living in the city of Cleveland off and on for the last ten years. My occupation is that of electrician. My brother was the witness who was just before me. I am not a member of the socialist local. I attended meetings on the Public Square in May and attended a meeting on the 20th of May. I heard Charles Baker speak.

Q. Can you tell the jury in substance what he talked of?

A. Why, I remember he said that, as a follower of Jesus Christ, that he could not kill another man, that he would not shoulder a gun.

Q. Was that just about all you remember of the speech?

A. Yes, that is about all that stands paramount in his talk.

Q. Do you recall whether or not he advised the crowd in regard to registration?

A. No, sir.

Q. Whether they should register or not?

A. No, sir.

The Court: What is your answer to that—that you do not recall whether he did, or did not?

The Witness: That I do not recall that he made a statement—the only statement I remember was that, as a follower of  
220 Jesus Christ, he could not shoulder a gun to shoot down another man. That is all that stands out in my mind.

Q. Do you recall any other statement at all that he made in regard to registration? Did he talk about conscription?

A. Well, inasmuch, as he could not shoulder a gun, he would refuse to be conscripted.

Q. To be conscripted?

A. Yes, sir.

I was present at the meeting on May 27th. I was there for part of the speech of Mr. Hayes. I did not hear all of that speech. I heard when he was talking of New Zealand and Australia, and then I went across the street to buy a cigar and when I got back Wagenknecht was on the stand. I heard what Wagenknecht said. I heard him make a statement that the people of the United States were not consulted on the conscription bill. About the only statement that I remember was that the people of the United States were not consulted about the conscription bill and when I came back into the crowd I had a cigar and I stood next to a woman and I must have blown the smoke into her face and she made some remark about it, so then I went to go to the outside of the crowd and while I was walking to the outside of the crowd Wagenknecht was pulled from the stand.

I listened to the speech of Mr. Ruthenberg that followed. I do not know as I can recall anything definite of that speech, only that he stated the cause of the war, the profits of munition manufacturers that they were making and I think that he also made a statement that Root, Roosevelt, Taft and Burton signed  
 221 a statement in the last campaign stating that all wars were caused or had a basis in trade and commerce, and we need not rely on the socialists making those statements, but to take them from the leaders of the republican party. I do not recall what if anything, he said on the subject of registration. As to what he said on the subject of conscription, he said he would not go to war.

Cross-examination.

By Mr. Wertz:

I have testified to everything that I heard said there that I can remember.

222 Thereupon the defendants, further to maintain the issue upon their part, called as a witness in their behalf the defendant CHARLES BAKER, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Charles Baker. I am state organizer of the socialist party of Ohio. My age is 26 and I am within the registration limits. I have registered. I was born in Hamilton, Ohio and have resided there since. I first visited Cleveland last fall, spent a week here on a lecture tour, but this year I came on the 18th of May. That is the day the conscription act was passed. I had not seen

this leaflet marked "Government's Exhibit No. 2," entitled: "Down with conscription." The first speech I made after I arrived in Cleveland was when I lectured the first Thursday night on the corner of 9th and Vincent Streets. If Sunday was the 20th, then I came on the 17th. I came into the city of Cleveland on a Thursday night, either the 17th or the 18th of May, and spoke at the corner of 9th and Vincent.

I first spoke on the Public Square on May 20th, Sunday. The audience was, I should judge, between 3,000 and 4,000 people. There was noise around there, general noise on the Public Square, street cars moving and automobiles and traffic in general. The noise is greater at some times than at others. I began to speak about three o'clock, I should judge. The speech that I delivered

there is a speech that I have been delivering in the state of  
223 Ohio for the last four months, substantially the same thing.

Q. I will ask you, Mr. Baker, now to repeat to the jury that speech as well as you can that you delivered on the 20th of May at the Public Square?

The Court: Just testify to the jury, according to the best of your recollection, what you said on that occasion on the Public Square in that continuous speech.

224 —. My lecture was—I did not deliver it in full on that occasion, due to the fact that there were other speakers present and the program—the length of time would not permit, but the lecture that I have been delivering over the State of Ohio under the auspices of the socialist party was entitled: "The Cause and Cure of the World War" in which I took up the economic cause of the war.

The Court: We want you only to give that part of it which you repeated in the speech in the Public Square.

The Witness: That is what I was going to do. I stated that I did not deliver the entire lecture and it would not be necessary to give it all to you, as you wanted just what I remembered of what I said at this particular meeting.

I took up and showed the economic cause of the world war and the concentration of wealth in the United States. I showed that the world war has been caused by the expanding of commercialism, the development of industry. I quoted the statement of Abraham Lincoln, made fifty years ago, to the effect that he saw in the near future a crisis approaching which caused him to tremble for the safety of his country, where the wealth of the nation had become concentrated or would become concentrated in the hands of a few individuals, and through this concentration of wealth the great

bulk of the American people would bow down on their knees  
225 and worship the god of Mammon.

Then I quoted the report of the United States Industrial Relations Commission, which we term the latest statistics on the concentration of wealth, and showed on page 33 of Basil M. Manley's report, the Secretary of the United States Industrial Relations Commission, where the wealth in America to-day had become concentrated to such an extent that 2 per cent of the people of America

owned and controlled 50 per cent of the wealth, and 33 per cent of the population of America owned and controlled 35 per cent of the wealth, and the remaining 65 per cent of the population of America only owned and controlled 5 per cent of the wealth.

Then I went on to show what had caused this concentration of wealth, namely, the private ownership of the means of life, the tools of production and distribution, the mills, the mines, the factories, and the railroads, and the natural mineral rights of the nation, which the socialist movement claims has been placed here by the Creator or by Nature as a blessing to all mankind; that through some method these things that have been placed here for the blessing of all mankind have become vested in the hands of a group of a few individuals, and through the private ownership of these means of life upon which humanity depends collectively for its existence upon the earth, through the private ownership of these means of life, they have been enabled to exploit the working class, who must use the tools of production and distribution that they do not own.

And I quoted the Government statistics, the report of Carrol D. Wright, Labor Commissioner for 25 years, showing the portion of wages received by the working class in producing the wealth in this country, where, after producing a dollar's worth of wealth in the factories that are privately owned by the master class, the capitalistic class, they receive in actual wages 17 cents, enabling 65 per cent of the population, which is the working class, to buy off of the market, to consume and enjoy, 17 per cent *per* of the wealth that they had produced, leaving 83 per cent of the wealth to remain upon the market, and that portion which the master class does not consume in their riotous living is piled upon the marked as unconsumed commodities, and it lies on the markets, and every fourth and seven years in America we witness what is known as an industrial depression. The first one I witnessed was in 1898. Being a member of the working class, I lived that entire summer on parched corn and molasses.

The Court: Is that what you told them?

The Witnesses: Yes, sir. I am repeating the speech. And I remembered the next panic of 1907, and the papers tell us in these times that when the factories close down and thousands of men are unemployed, that there is an overproduction, and I could not see how there could be any overproduction of clothing when people were wearing rags, how there could be an overproduction of food when one-third of the school children of New York went to school every morning underfed, according to the health reports of that city, or how there could be an overproduction of any of the necessary things of life when the working people in general were depriving themselves of the necessary things of life.

So we term it not a case of overproduction, as claimed by the papers during these industrial depressions, but a case of under-consumption; that the great bulk of society that has produced this wealth had not received enough in wages to buy it off of the market and enable them to enjoy and consume it. Therefore it was an unconsumed com-



modity, and not a case of overproduction but a case of underconsumption.

And then I went on to show the peculiar state of affairs which the country is placed in every four to seven years through this so-called overproduction, that the factories close down and there are no orders go into the factories to produce any more commodities until they dispose and sell the enormous amount of commodities which has piled upon the market, and when there are no orders go into the factories to produce the working man is laid off and thousands of them are unemployed, and then we find always in this peculiar state  
228 of affairs there are no orders go in to produce until they sell what is on the market. They cannot sell what is on the market until the working people buy it. The working people cannot buy it until they get money, and they cannot get any money until the factories start to work and employ them, and the factories cannot start to work and employ them until they get orders to produce. They cannot get orders to produce until they dispose of what is on the market, and they cannot dispose of that until they get money, and so forth, and so forth. It is an endless chain.

So that the only hope is to dispose of the commodities on the market, and we have found that the working class, thousands of them, are unemployed in these industrial panics, and we find the larger metropolitan cities of America putting up soup kitchens and bread lines, and find poverty and misery running amuck throughout the homes and the districts of the working class and there is want and privation among the people who are employed, who are tramping the highways and byways of the United States seeking a place of employment where they may give their labor power to produce in order that their children at home may enjoy what they had produced, and when there is a general unemployment over the country, thousands of men unemployed—and it is a well known fact that when a person's stomach begins to growl for want of the necessary  
229 things of life, he thinks more in that state and in that condition and it is to the interest of the man who sits on the throne of power, who privately owns and controls the means of life—it is to his interest to see that the general working class is kept busy and steadily employed, because, unemployed, they become more dissatisfied than ever, and, in order to keep them employed, he must keep the wheels of industry turning, and, in order to keep the wheels of industry turning, he must dispose of the commodities on the market, and, in order to dispose of the commodities on the market which are unconsumed, he is compelled to find a market, and as he cannot find a market in America, he is compelled to go out of the realms of the United States in which to find a market so as to turn in to gold those commodities which he had exploited out of the working class of this country through the private ownership of the means of life upon which mankind depends for its existence.

Then I showed that this world war is the outcome of the competitive system. It is the natural outcome of the private ownership system. That is the natural stage that we are traveling in the progress of the human race. That as the human race travels up

through the different stages in its travel from the beginning of time all through barbarism, savagery, feudalism, into capitalism, so it will naturally follow that it will have to travel on out of capitalism into the next way, the way of collective ownership or the cooperative commonwealth, as the socialist movement terms it, or the industrial

230 democracy, where the people themselves will own collectively those things upon which their life depends collectively.

I showed that the war of Europe three years ago was caused by the commercial greed, and how every war has been caused by commercial greed, the desire of one class of one nation or the individual of the nation to possess that which another nation or the class of another nation has in their possession, and the desire of commercialism to expand and dominate the markets of the world.

Then I went on to show the horrors of the European war and how this world war has been brought on, namely, that we never had a world war between all of the nations of the world until the system of private ownership had become modernly developed in all of the nations of the world, until they found that the wheels of industry and the tools of production and distribution had become developed in all of the great nations of the world, that the private ownership of the tools of production in each of these nations was exploiting the working class of their own respective nations out of billions of dollars every year, and they had to find a market to dispose of it. And we find in the year 1917 that industry developed in all of the nations of the world, and they were all sending out their industrial scouts, seeking foreign markets, and that the world

231 war has been the result of the desire of the master class of all of the nations of Europe to expand in the domination of the world market.

I went on and showed the horrors of the war and the evil conditions that prevailed and what the outcome of the war would be, and then I took up and showed the price that the working class will pay and the price that they have been paying in the trenches of this horrible world war, the murder of hundreds of thousands, the breaking of millions of homes, the breaking of the hearts of the motherhood of Europe, and the rendering of millions of children orphans, and so forth, showing the horrors of the war condition; that the price that the working class of Europe had been paying for the last three years in this war was not the purchase price of their liberty but it was the penalty price of their stupidity; that they had it in their power, as they had it in their own hands, the means of ushering in the new society, by the peaceful use of the ballot, as the socialist movement advocates, but they had rejected the idea of the socialist movement, of ushering in the new society by a peaceful way, and now they were going to pay the price upon the field of battle.

And then I went on to show how that the glories of the war and the splendor of the war that led the working class right into the trenches three years ago—that it was all drowned out of existence, that after three years of war the glories of war were not so beautiful any more and now after the war had been in existence for three years we find the working class of Russia going home and

232 demanding of the Czar why they were fighting, and the Czar, being unable to tell them, having, the same as the kings of the other nations, assisted in plunging them into the war, did not know what they were fighting for, and the result was that the working class of Russia overthrew the Czar and established the first industrial democracy and wiped out of existence in a revolution of three days the blackest autocracy that the pages of history ever records.

I went on to show how the socialist movement in Germany, which had supported the Kaiser and the fatherland at the outbreak of this war, led by the belief that it was a war of defense, that they had to defend the fatherland—how part of the members of the socialist movement at the out-break of the war deserted the fundamental doctrines of international socialism and supported the Kaiser and the fatherland in the war at the beginning, and how now, after realizing the conditions and the state of affairs—how now they were standing up and demanding in the German reichstag for the first time in the history of that nation the overthrowing of the Kaiser and the establishment of a democracy in Germany, and how that the present war in Germany would not cease until the working class had come into their own, the same as they had in Russia.

I went on to show that Spain was *reething* in the throes of a revolution, that China was *reething* in the throes of a revolution,

that England was having its troubles and that the king of  
233 England through pressure being brought to bear, the internal strife that was caused by this world war, was going to grant Ireland its liberty and its home rule which 12 months they refused to give them, and 12 months ago, when Ireland demanded this home rule and liberty from England, the champions of Irish liberty were shot down in cold blood on the streets of Dublin, and their crime was asking for liberty from Great Britain, and instead of giving them liberty they received from Great Britain the same thing that George Washington and the thirteen American colonies received in 1776, when they asked for liberty. They received bullets from Great Britain, and the only reason that America received its liberty was that Great Britain possibly did not have enough bullets. But they had enough bullets for the Irishmen, and those who demanded liberty for Ireland were shot down in cold blood in the streets of Dublin, and now they were going to give them their liberty without asking for it. Now, the king of England is going to give them liberty when they are not even demanding it.

I showed that that was brought about through the glories of war being lost, through the working class having paid the bitter price. Now they are realizing their situation and they are going to demand something in their own interests. Then I treated the state of affairs in the United States and showed through a concentration of wealth in America, that through J. P. Morgan, while we remained as a  
234 neutral nation—America remained for three years as a neutral nation—that during this entire three years Morgan, as we were told, was the official purchasing agent of England and the allies. He not only cornered the food supplies along with his

followers and members of his own class, the food speculators, not only cornered the food supply of the market and shipped it across the pond and fed the world and starved America, but manufactured thousands and thousands of dollars' worth of munitions of war and shipped it across the pond.

I told them further that the master class of America, while America remained as a neutral country, not only shipped across the pond the millions of dollars' worth of munitions of war in order to feed the war of Europe, but also loaned them the money to buy it with. I claimed that this loan to the allies was not secured; that any money loaned for a destructive purpose never was secured, and that the only money that is secured is money which is loaned for a constructive purpose, to build up and not to tear down. Money which is loaned for a constructive purpose, to build up, is secured by that which is being built by it, but if you loan money for a destructive purpose and take as your security something already built, and then tear it down, then you lose your security.

Then I showed how it was to the interest of Morgan and the master class who had made millions of dollars out of this war, how it was to their interest that America should be engaged in this war.

235 I quoted them the records of the United States Congress, Senator Callaway of Texas, who has had it written into the records of Congress that the American financial interests sent out paid representatives and interviewed 179 newspapers of the United States with the purpose in view of purchasing their editorial columns and controlling the editorial policy in general of the daily press of the United States which molds the opinion of the American people, the same as the press of any other nation, and how, after going through an elimination process, according to Senator Callaway and the records of Congress, it was only necessary to purchase the editorial columns and policy of the 25 largest newspapers, and, according to Senator Callaway and the records of Congress, the 25 largest newspapers of America, were bought and paid for by the interests of Morgan, who has made billions of dollars out of this war while we were a neutral country, and that the daily press now is controlled, the columns, the editorials, and all articles that are written on war and military and financial and commercial and industrial matters in general, all international or national questions dealing with this war—that those articles and editorials are all written by paid representatives of the Morgan financial interests, according to Senator Callaway.

I showed them how that was a great assistance in leading the United States into this great world war, how the daily press was not voicing the sentiments of America, they were not voicing the  
236 ideals that this nation is founded on, that they were voicing the ideals and those things that were to the interests of Morgan and the master class that had purchased the daily press, and that in voicing their sentiments and those things, that was in the interest of Morgan, that it was not the interests of America, and it was not to the interests of the working class of America.

I went on to show them that the working class of America is going

to pay the price, the same as the working class of Europe had to pay the price, that we are going to pay the price of blood, broken homes, broken hearts, dying and agony, and so forth. I stated that the conscription law had been passed; that there were going to be 500,000 young men conscripted and to be sent across to the battlefields of France, and so on, and that, according to President Wilson, he expected a million men to offer up their lives under the folds of Old Glory on the field of battle, and so forth, and showed that we had entered the war to such an extent that we were going to pay the price also, and that the price that America was going to pay on the battlefields of the world war would not be the purchase price of our liberty—our liberty has already been paid for upon the battlefields of 1776—but the price that we were going to pay in this world war was the penalty price for our stupidity, due to the fact that we have given to the master class of America—permitted them to privately own the means of life, the wheels of industry, and that they will only turn the wheels of industry and turn out the necessary things of life in order to produce a profit to its private owner, and that after they turn out these different commodities, turn the wheels of industry, then they have got to find a market in which to dispose of these commodities, and that they have been compelled to go out into the markets of the world, competing with the master class of other nations in order to wrest markets from the hands of other nations.

I then quoted an interview I had with a newspaper reporter in the city of Akron who asked me what I would *I* do, knowing that I was of conscription age—what I would do if I was drafted by the United States. She said that she heard my speech in the city of Akron. She knew that I am opposed to war, a conscientious objection to conscription and war in general, and what I would do in case I was conscripted, and I said that I would refuse to be conscripted, that I would refuse to go to war, that the party that I represented, my ideals of the socialist movement, had a different way of settling the disputes between the master class or between nations except going out on the battlefield, that we could absolutely settle them in international conferences, boards of arbitration, even under the present system; that it was not necessary to go into the field of battle, and that, if conscripted, I would refuse to go to war. She asked me then knowing—if I knew what the penalty would be. I told her that I realized that the penalties for refusing to be conscripted in time of war, to refuse to answer the call of your country and go to war and murder or possibly to be murdered—that the penalties in time of war was whatever a military court saw fit to hand down, from one day in the guard house to being lined against the guard house and shot. She asked me—"knowing this, what would you do?" I said "if I was confronted with that proposition that I hoped that at that hour I would have the courage of my convictions and that I would smilingly face the firing squad and refuse to go and murder men I had never seen in all my life," and I repeated this on the Square.

I urged nobody—a man asked me a question as to what I would

do. That is the way I put this question in. A man asked me a question, what I would do in case of conscription and I told him I would refuse to be conscripted and shoot down men I never saw, and then I gave a closing word, showing the general conduct of the world war and how we were evolving into the new era, and how that the industrial democracy, the co-operative commonwealth, as the socialist movement terms it, the collective ownership of the means of life, how it was being ushered into existence—not the way the socialist movement had planned, to the quiet and peaceful method of the ballot and the use of political action, but how it was being ushered in over the dying and mangled forms of bleeding millions who had the power in their hands to usher it in peacefully and how

239        in the course of the next five to ten years we would be establishing the industrial democracy in the world and we would then start for the first time to living upon the basis of real and true civilization. I believe that is about all, your Honor.

A. I will ask you, Mr. Baker, if there was anything said about registration?

Mr. Kavanagh: I object.

The Court: It is quite apparent that the witness has exhausted his recollection of what he said. It is permissible for counsel to put the question as to what, if anything, in addition to what he has already said, was said on the subject of registration or of conscription or of any other subject matter, and you may go further and put to him, if you wish, the testimony of other witnesses as to what they say he said and ask him what he has to say in regard to that.

Q. You may answer that question, Mr. Baker.

A. What is the question?

The Court: What, if anything, in addition to what you have already testified was said by you on that occasion on the subject of registration or conscription.

Mr. Sharts: I asked simply about registration now.

The Court: All right.

A. I said nothing in regard to registration.

Q. Was any question asked regarding registration?

A. No, sir.

Q. In the testimony of Mr. Schue, which you heard, I believe, there was a statement made that you had said something

240        about the standpoint of the socialist party on registration. Did you make any such statement?

A. Not on the question of registration, no, sir.

Q. What were you confining your remarks to?

A. Towards the close of my lecture, along about the same time that I answered a question that a man asked in the audience: "What would you do in case of conscription?" I related to him an interview I had with a newspaper reporter in the city of Akron, which I gave in my other testimony, and then I called attention to the fact of the position of the socialist party in the national convention at

St. Louis, to which I was one of the delegates, their position on conscription, that we carry on an active campaign in opposition to conscription, and that we would do everything in our power to urge and bring about the repeal of the conscription law and the wiping of it from the statute books.

Q. I will ask you if you attended that national convention to which you were referring in your speech?

A. I did.

Q. I will ask you if you are familiar with the war program of the socialist party?

A. I am.

Q. I will ask you if this is a copy of it? (Handing paper to the witness.)

A. It is.

241 (Thereupon the said exhibit offered in evidence by counsel for defendants was marked "Defendants' Exhibit No. 1," and is hereto attached and made part hereof. Said exhibit was thereupon read in evidence to the jury by counsel for defendants.)

The speech that I delivered was based upon the program that is set forth in that exhibit. I have not advocated any principles or tactics in contradiction of that program.

Q. Have you been asked by any one what they should do in case of registration?

A. I have.

Q. By whom?

A. I was asked by three persons, members of the party from Lorain, Ohio, who came to Cleveland on Decoration Day and asked my advice, as the state organizer, what they shall do on the question of registration.

Mr. Wertz: I object.

Mr. Sharts: If your Honor please, it seems to me that the testimony is admissible at least to show the motive and purpose and consistency of the speech that he has made, to show the attitude of the speaker with regard to registration, which has been questioned.

The Court: No, I will sustain the objection to that. The charge here is a specific charge that is confined to his acts and conduct on a specific occasion when he was listened to by some person and when, it is alleged, he caused that person to violate the law and thereby made the defendant here a participant in that violation. That fact

cannot be affected by proof as to what his attitude was on  
242 other and different occasions. I will sustain the objection.

Mr. Sharts: Enter the exception of the defendants.

Cross-examination.

By Mr. Wertz:

I am familiar with paragraph 2 of the proclamation or resolution of the socialist party in St. Louis which was read by Mr. Sharts, and particularly the paragraph in which it is stated: "We pledge our-



selves to continuous efforts for the repeal of such laws and to the support of all mass movements in opposition to conscription." I learned after I came to Cleveland of the resolution adopted by the socialist party in Cleveland on the 13th of May, in which they suggest to socialists that they refuse to register for conscription and "Pledge to them our financial and moral support in their refusal to become the victims of the ruling class." I first heard of that during this trial.

I was not present on the 27th of May on the Public Square when Wagenknecht and Ruthenberg made their speeches. Tom Clinord and Mr. Ruthenberg spoke with me on the 20th of May. Tom Clifford did not refer to the resolution of the 13th of May. I never heard any of the speakers in the ten weeks I have been in Cleveland refer to it.

Q. What about the meeting on the 10th of June on West 25th Street—did you hear this resolution spoken of over there at that time?

Mr. Sharts: I object.

243 (Objection sustained.)

Q. Were you on the 10th of June on the West Side, on West 25th Street?

(Objection by defendant; overruled.)

Mr. Sharts: The offense that he is charged with was committed on the 5th of June.

The Court: The question is as to the intent and attitude of mind of this witness at a specific time. Now, in cross-examining him as to that, he may go further.

Mr. Sharts: Enter our exception.

Q. The Court rules you may answer the question.

A. I would like to have it repeated.

The Court: You were asked now if you were present at a meeting somewhere on the 10th of June in Cleveland.

Q. On West 25th Street.

A. I would not be sure. I was present at a few meetings over there but I would not say sure I was there on the 10th of June, the date mentioned.

The Court: Your recollection is that you were not there on the 10th of June, is that it?

The Witness: Yes, sir.

Q. Do you know where Market Square is on West 25th Street?

A. Yes, sir.

Q. You are the Charles Baker of Hamilton, Ohio?

A. Yes, sir.

Q. Do you remember of being over there at a meeting with Tom Clifford?

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Q. And Ruthenberg or Wagenknecht?



A. Yes, sir.

Q. Do you recall now that either one of those gentlemen referred to this resolution at that time?

A. No, sir.

Q. In fact, you never heard of this Cleveland resolution until you came into this room?

A. No, sir.

Q. Did you ever see "Government's Exhibit 2" before?

A. Not until I saw it in the court here.

Q. You never saw it before?

A. No, sir.

Q. I hand you "Government's Exhibit 3" and ask you if you ever saw one of those before?

A. No, sir.

Q. You never saw that?

A. No, sir.

Q. What was it that you said about the newspapers being corrupt in your speech?

A. I quoted a record of the United States Congress, the report of Senator Callaway of Texas. His report claims that the J. P. Morgan financial interests sent out official representatives for the purpose of purchasing up and controlling the editorial policy of the daily press of the United States.

I did not use this expression in my speech: "You get your patriotism from the lying, prostituted press."

I made a speech on the 17th of May in Conneaut, Ohio.

245 Q. On the 17th of May. Did you use this statement in Conneaut —

Mr. Sharts: I want it understood, of course, that I am entering an exception to all of this line of investigation as to anything said by this defendant where Schue was not present or that occurred at any date subsequent to the date that he is charged with having aided and abetted Mr. Schue.

The Court: As an independent proposition, it might be questioned as to whether his speeches made before the passage of the law or made after the 5th of June, after the commission of the alleged offense, are admissible, but the question here is as to the intent and understanding and purpose of certain acts and speeches said to have been done and made on the 20th of May. Now, in cross-examination, counsel is not limited merely to an inquiry as to what was said at that time, if it is not entirely too remote as bearing upon his intent and behavior. He may ask that question.

(Exception by defendant.)

Q. Did you use this statement in your speech at Conneaut: "You get your patriotism from the lying, prostituted press"?

A. No, sir.

Q. Did you use that statement in substance?

A. No, sir.

Q. Did you use this statement in Cleveland, in substance:

246 "If some of your people here are drafted into the army to fight in this war against your will, there will be people here and an organization here that will be with you"?

A. No, sir.

Q. Did you use that statement at Conneaut?

A. No, sir.

As to the statement that I used in regard to myself here in Cleveland in my speech in regard to my being conscripted, the only place that I referred to myself, as to what my actions would be, was in reply to a question on the Public Square on May 20th by some man standing to my right who asked the question: "What will I do in case of conscription?" I quoted to him an interview that I had with a reporter of one of the Akron papers, to the effect that in case of conscription I would refuse to be conscripted and that I hoped that I had the moral and physical courage at that time to stand the consequence of my refusal to go out and murder people I had never seen.

I did not make the statement on the Public Square that you say Schue testified to that: "He said he would refuse to register, him being of military age" and: "He said he would rather be shot here as a man than be shot in the trenches of Europe as a dog."

I do not recall discussing the subject of registration at all on the Public Square. I never discussed the question of registration. My speech was based on the cause and cure for the war, and I mentioned conscription in reply to a question a man asked me, the only time I spoke on it. The meeting was called as a so-called peace meeting, and I was there discussing the causes and cure for the war. In the course of that meeting I did state to the audience that I would refuse to be conscripted under the circumstances and that I hoped, if I still had my moral courage, to be able to resist. I did not make any explanation of what was necessary to be done by the young men before they could be conscripted.

In that speech I did not make any explanation to them at all as to how this law could be repealed or how the Government could be prevented from acting or carrying this law into effect. I did not explain to them as to how they could resist conscription.

I do not recall the exact testimony of the policeman here in which he testified to what I said in regard to the registration law. I do not remember of saying: "Within my voice there are a good many young men within the age of conscription and that these young men will all be required to register under this law." I did not make any reference to registration at all. There was no question asked me on the subject of registration.

I do not remember in detail the testimony of Police Prosecutor Lind. I did not say in that speech: "Those who refuse to register, that the socialist party would defend and protect." I did not say that in substance. I did not say that the socialist party would not only defend but protect those who failed to register.

The Court: In this St. Louis resolution or program that you say was the program that the socialist party adopted, it says: "We pledge ourselves (omitting some) to the support

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of all mass movements in opposition to conscription." What do you understand is meant by a mass movement of your party?

The Witness: A mass movement is a mass demonstration to discuss, to educate, to take up and discuss in detail, any question or circulate petitions for the repealing. I have always determined the question of mass action in the ranks of the socialist movement meant mass demonstrations upon a certain proposition, or to advocate a certain question, such as the mass demonstrations we have had in the Public Square and throughout the city of Cleveland, urging the repeal of the conscription law; which was in harmony with the national declaration. My understanding is that the definition is mass demonstrations such as have been held in the city of Cleveland, where the people work together for the repealing of the law instead of working individually, that they hold large demonstrations together. That is what my interpretation is of mass action.

Redirect examination.

By Mr. Sharts:

Q. You were asked, Mr. Baker, on cross-examination, about some meeting over at Market Square along about June 10th?

The Court: And he testified that he did not remember having attended the meeting.

— I did not make any different speech at those other meetings than that which I have repeated here. That is my set speech.

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1:30 p. m.—July 20, 1917.

Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf the defendant ALFRED WAGENKNECHT, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Alfred Wagenknecht. I am secretary of the socialist party of Ohio. I have held that position for seven months. I am 36 years of age. I was born in Germany and came to this country at about the age of a year and a half. My father has citizenship papers and I am a citizen because of his papers. He was naturalized during my minority.

I was present at a meeting on the Public Square on Sunday, May 27. Mr. Hayes and Mr. Ruthenberg also were the speakers. When I arrived at the Public Square, about 2:30, Mr. Hayes was already speaking. At that time the size of the crowd was about 3,000 or a little more.

250 Q. I wish you would narrate now to the jury your recollection of what Mr. Hayes said?

A. At that time—

Q. You are charged with having made a speech immediately

following Mr. Hayes in which you made certain remarks about Mr. Hayes' speech, and I wish you would tell the jury now what you understood by Mr. Hayes' speech and what it was you took exception to, if anything?

A. Mr. Hayes, when I came to the Square, was talking about labor movement in New Zealand and Australia. He talked about that for a good half hour and finally, in ending his speech, he said that the socialists who would criticise or oppose the laws passed by the Government was a muddle-headed fool to do so, and in the beginning of my speech, I took exception to that. Mr. Hayes also stated repeatedly, reiterated, that the socialist party was a small and insignificant organization, and, of course, being a part of that organization, I took exception to that when I got upon the platform because I am rather a booster and wanted to have the audience realize that we were a growing organization and fairly large. I took exception to what Mr. Hayes said in his reference to criticism of the Government. I claimed in opening my address, that we had a right to criticise the government.

Q. Go right ahead and tell your understanding of Mr. Hayes' speech and what part of it you were taking exception to.

The Court: Probably you had better have him state what 251 Mr. Hayes said and what he said that he took exception to and then, if he wants to offer an explanation as to what he understood, let him do so.

Mr. Sharts: I think he stated what parts it was that he was referring to in Mr. Hayes' speech.

A. Yes, I was doing that. I will repeat, if it is necessary at this time, that Mr. Hayes indulged in a criticism of the socialist party organization and socialists in general, and for that reason, when I got upon the platform, I made an attempt to defend the socialist party, being an officer of that organization. I, therefore, told the audience that Mr. Hayes upon this occasion did not seem to represent the party organization, that Mr. Hayes had been away from the organization quite a while, had not been closely allied with that organization, had been more busy in union labor matters—I made that reference—and for that reason I thought Mr. Hayes did not express the opinions of our organization upon the platform this afternoon.

Q. Now, this remark that you said—about Mr. Hayes saying that the socialists who opposed and criticised the Government were muddle-headed fools—you said that you made some remark with reference to that?

A. I do not want to lay claim to the exact wording of that, but I say that is what I understood he said in substance. He made a disparaging remark against socialists and he used some adjective criticising them which belittled them—he either said “muddle-headed” or “simple-minded” or something like that. 252  
I answer to that was not a direct answer. It was simply an answer in general, namely, I got up there and told the audience

that Mr. Hayes was not speaking for the socialists this afternoon probably because he was too long away from the organization.

Q. Now, I wish you would repeat to the jury, as well as you can, the speech that you made as you got up on the stand after Mr. Hayes?

A. After I was through with my criticism of Mr. Hayes, I went on to indulge in the criticism of the fact that this country had entered the war. I dwelt on that for a little while. The few remarks I made, because they were not so conciliatory toward our government as the remarks of Mr. Hayes, brought forth a good deal of applause. The audience seemed rather to accept the remarks that I made, namely, the remarks which were against our government entering the war, with greater favor than the remarks that Mr. Hayes made, in that he sort of favored the war or did not oppose it as he should as a radical, as a socialist, and so my remarks were interspersed not only with a great deal of applause but with shouts. There was a great deal of shouting going on all the time, and I said these words, to the best of my recollection:

253 I said there were two things that any one can do at any time. You can either obey the laws that are passed or you can go to jail as a consequence for disobeying the laws. I said these things in explanation of my understanding of the right of a majority and a minority at any time and at any place. I am an organizer of the party and have been for years. I recognize the value of organization and its benefits. I know the rights of minorities in an organization. I know the rights of minorities in a government, and, in explaining to my audience the stand which we socialists take upon the war, and our stand upon this question of conscription, I simply wanted to tell them that there were majority and minority positions, namely, that there was a majority position, which was the position of the government at the time and which would keep them out of jail, and that there was a minority position that took the position against the war and would throw them into jail. I reiterated that remark two times because—in fact, I said it three times. The third time I said it was when I was arrested, because I intended to go back to that same matter to discuss it further and explain it further, but my arrest, of course, hindered me doing that.

Q. What was the further explanation that you were beginning?

A. I probably included that in my previous remarks, but I want to reiterate that my intention was to leave my audience with this notion, namely, that the registration law, the conscription law, which had been passed, was a law of the government, that I surmised that, because of the opposition to this war, there might

254 be certain violations of that law, and I wanted to leave my audience with the impression that those violations would entail jail sentences, and even before I was stopped making these remarks I said to my audience that jail sentences would be the result of violation of this law, not in so many words, but in effect. Now, I think that answers it, doesn't it?

Q. State whether or not you made any statements with regard to registration?

A. I mentioned the word "registration." I made certain references to registration, yes, sir.

Q. Do you remember just what language you used?

A. Well, I repeated that. I will repeat it again. I said there was one of two things you can do to my audience. There are one of two things you can do. You can either register and stay out of jail or you can refuse to register and go to jail. Of course, there was a qualification which I want to insert and which I inserted before and which I insert now, namely, the qualification that if you do not register and, as a result, go to jail you violate the law of the government. In other words, I was there telling them of the consequences of violation of this law and of the consequences of obeying the law. I was making an explanation to the audience.

Q. Have you given or did you in that speech give any advice on the subject of registration?

A. I never gave any advice upon the subject of registration to any one.

Q. Have you at any time given any one any aid in refusing to register?

A. I never did.

255 At the time I was speaking I observed a stenographer in the crowd. He stood about twenty feet away from me on my right, about.

Q. Explain to the jury his actions, as well as you recall them?

A. If the jury will remember, the typewritten transcript of my speech refers to my mentioning the stenographer. I have always paid particular attention in my meetings to the officials present and the prosecutors present and the stenographers and the federal agents, if I knew them. I knew they were present when they were there. Now, I kept my eyes constantly upon De Woody and the stenographer while I was speaking. I know that the stenographer labored under extreme difficulties in taking his speech, because the crowd was—not boisterous, but enthusiastic—did lots of shouting and lots of applauding, and it was true, as the stenographer himself testified, that at times he had to use Mr. De Woody in order to take his notes; he could not take them himself. Not only that, but I saw him ask Mr. De Woody several times—not once or twice but at least four times that I remember—"What did the speaker say?" I did not hear this distinctly, but I know he asked Mr. De Woody a question and then he stopped writing for two or three sentences before he could catch up again—before he continued his stenographic reports upon his sheet. Now the reason that I know that he asked him this question was because I can read lips fairly well at a distance, and I saw the question formed that was propounded upon his lips:

256 "What did he say?" It is easy to recognize what a man says at most any distance when he says those few simple words.

Q. When you were in the midst of your speech, it has been testified that you were taken from the stand and placed under arrest. I wish you would tell the jury what occurred at that time?

A. I was taken down to the police station and stayed in an outer

office for a long time with some other people and several officers, and after the meeting had adjourned upon the Square, I guess, Mr. Lind and Mr. De Woody came in and took me into another room. I walked into another room and they stood in front of me, with my back turned towards the door and toward a corner in the room, and began asking me questions. I was not only asked questions by Chief of Police Rowe and probably by one or two officers in the room. Those questions at first pertained to my place of birth and my citizenship and what I had been doing in late years, and whether I had been to New York lately. They seemed to want to make an attempt to connect me with the German Government. Now, subsequently, they began to ask leading questions relative to my speech, and I got sort of huffed at that because I did not think they had a right to ask me those questions, and turning around I saw that the stenographer was taking everything that I was saying. I did not see him sitting there when I entered the room. The first question they asked me relative to what I had said at my meeting, I frankly told them that the case was not being tried in that room that day, and  
 257 all I wanted to know was what the charge was against me and wanted my bond set so that I could get out; I had another meeting to attend to.

Q. Were you asked any question there regarding the difference between your position and that of Mr. Hayes?

A. I was asked a question relative to that. In fact, I think they asked me two questions.

Q. Do you remember of any question put to you as follows: Mr. Lind saying to you: "This fellow, what's his name here, kind of upset the dope, didn't he?"

A. I remember that question, and I answered "Yes" to it, meaning, of course, that he criticised the party and upset the meeting.

Q. Do you remember any statement like this from you? "Well, he has been a little away from the party activities and he did not understand the party. He has taken the same stand that the labor unions generally have taken."

A. Yes, I answered him in that way.

Q. Do you remember a question like this put to you by Mr. Lind: "Well, he, in other words, does not believe that the rights of free speech goes as far as you do. Hayes evidently does not believe in advocating the violation of the law and that is where he differs from you?" Was such a question put to you?

A. Yes, a question that was put like that was put to me.

Q. Do you remember what your answer was?

A. I refused to answer.

Q. You refused to answer that question?

258 A. I refused to answer any questions with relation to the speech and my part in the meeting.

Q. You are positive on that subject?

A. I am very positive upon that subject.

Q. At the time that this questioning was being put to you, you say that there were a number of people in the room?

A. Yes, sir; not only were there a number of people in the room,

but questions were being fired at me from three sides, and this answer of "Yes" to that question may have been an answer to another question asked by Chief Rowe or asked by De Woody. I said "Yes" a thousand—not a thousand times—I said "Yes" a dozen times to various questions they asked, about my citizenship, about my place of birth, and where I had been lately, and how many years I had been in the party, and whether I was paid by the party or not, and all of those questions were asked me. They interspersed these questions with questions like these, attempting to make me admit that I had said something at my meeting that I did not say and never intended to say, and this answer of "Yes" undoubtedly was an answer to another question put to me.

I am affiliated with the national socialist party. I am familiar with the proclamation and war program of the socialist party. I was at the convention at which it was adopted. "Defendants' Exhibit No. 1" is the war program of the socialist party. The individual member of the party is always bound in some degree by the party declarations, but an individual in any organization has certain rights of criticising the organization, just the same as the  
259 organization itself takes the right to criticise those whom it opposes. As to the position of the socialist party in the matter of opposing by unlawful means any law of the United States, the socialist party is absolutely opposed to opposing anything by unlawful means, and differs in that respect from other organizations which we are sometimes mixed up with.

Cross-examination.

By Mr. Wertz:

When there are stenographers and officers in the audience I keep my eye on them because I want to see what they do and what they are about. I knew they were there in the meeting for the purpose of trying to get evidence against us, and I was very careful that I made no remarks that would lead them to make an arrest or get evidence against me.

When Mr. Farasey was talking to Mr. De Woody I very distinctly interpreted the words "What did he say?" by seeing his lips move. I do not recall what Mr. De Woody answered. He had his face away from me. What I want the jury to understand is that Mr. Farasey did not get all I said over there. His report is not correct in the main. I say it is full of error. I did not repeat my speech verbatim to the jury. I gave the jury to understand what I did say over there in substance. I did not believe on the 27th of May, when I made that speech, and do not believe now that it is the right thing to do for a socialist to refuse to register for conscription under the con-  
260 scription act. I think that all socialists ought to go and register, after the law has been passed.

I was present at the meeting on the 13th of May in the socialist hall, on a Sunday afternoon. Mr. Ruthenberg was not the presiding officer. I was near the platform. I saw the resolution marked "Government's Exhibit No. 1" before the law was passed. I



did not see that on the 13th day of May. I did not hand it to the young soldier who testified here yesterday, who was a reporter for the "Cleveland Leader," on the afternoon of the 13th and say "That is the resolution we adopted." I do not remember of making a speech in that hall in favor of the adoption of that resolution. The young soldier was absolutely wrong in a good many points he tried to make. As to whether I or Mr. Ruthenberg handed it to him to put in his newspaper, I am absolutely sure I did not hand it to him. I don't know who handed it to him. I am absolutely sure I said nothing about that resolution. My residence is at 1291 Cook Avenue. "Government's Exhibit No. 2," containing "Government's Exhibit No. 1" was sent out by me as a sample of what local Cleveland was doing before the law was passed.

There was a bundle of these papers (Government's Exhibit No. 2) sent by me to East Palestine, Ohio, to a man by the name of A. A. Hennacy. I don't know whether the Government held them up or the postmaster refused to deliver them to Hennacy. I know that Hennacy did not get the literature. "Government's Exhibit No. 4"

is a copy of the letter I sent to the postmaster at East Palestine.  
261 I know who Hennacy is. I know he was convicted of opposing conscription and I know his appeal is pending.

262 Q. And I will ask you whether or not this is correct in this transcript: "Comrade Hayes has given you his version of this question of conscription. It happens, however, that our friend Hayes' version does not quite agree with the official action of the Socialist Party of the United States, and, not agreeing with the official action of the Socialist Party of the United States, we must say that this afternoon Max Hayes does not speak for the Socialist Party." Is that correct?

A. That is correct, in substance, when referring directly to the question of conscription.

Q. Referring to the question of conscription, then this is correct, is it, that Max Hayes does not represent the official action of the Socialist Party of the United States on the question of conscription? Now then, what was Max Hayes' attitude on the question of conscription?

A. Max Hayes' attitude upon the question of conscription was about the same as the American Federation of Labor took namely, that after the government has once spoken, no more should be said about the laws passed. That was my interpretation of Max Hayes' attitude as a state organizer.

Q. Is it not a fact that Max Hayes said they should go and register and comply with this law until Congress repealed that law?

A. He said that and other things about conscription.

Q. And isn't that the thing you were criticising Max Hayes for when you say that the Socialist Party has taken a definite and decided stand upon the matter of registration for conscription  
263 and that Max Hayes does not represent the Socialist Party of the United States on that subject?

A. Are the words "registration for conscription *for conscription*" in that?

Q. Yes.

A. I did not say "registration for conscription."

Q. "The Socialist Party has taken a very definite and decided stand upon this matter of registration for conscription."

A. I did not say "registration for conscription."

Q. Then the stenographer put that in there and you never uttered it?

A. No, I don't remember of uttering it. I made it my particular aim to distinguish anything the audience might get upon these two words, namely, registration and conscription, and I distinguished between the two all through my speech.

Q. Is this correctly reported by the stenographer: "There are two things you can do under any circumstances, when it comes to obeying or disobeying the law, and these two things are these: You can either obey the law made by your masters and grovel in the dust and eat sand for the rest of your life, or you can at last stand up like men and say, 'The time has come when we, through organized power and strength, must say to the capitalists that they cannot any more curtail our rights and our freedom and our liberty.'"? "

264 A. Yes, but that was not in reference to conscription or registration. It was a general statement.

Q. Of course, during this period of change, during this period when the working class is ascending to power, many of us will have to take jail sentences because we were the pioneers, understand, in this movement for working class liberty, but when somebody has always had to take jail sentences who were pioneers in a movement for the liberty of any people, understand, and so we are willing today to take those jail sentences, and because we are willing—because we are willing to take those jail sentences, we say to you that you have full rights to do one of two things upon this matter of conscription."?

A. Before that remark was made, I remember particularly telling the audience that governments had powers in certain instances in respect to the enforcement of laws, and then I said what you read to me in reference to the power that the government had in enforcing laws, and that those who violate the laws must take jail sentences.

Q. I ask you now, didn't you make that statement in reference to compliance or non-compliance with conscription and registration for conscription?

A. I made it a direct reference as applying to conscription, but nothing as applying to registration.

Q. If you agreed with the conscription act—were you ever informed that there was any jail sentence for refusing to be conscripted?

265 A. Knew of the jail sentence for refusing to be conscripted when the law was passed, when I read it in the newspapers.

Q. Don't you know as a matter of fact that there isn't any imprisonment for not complying with the draft, after you are drawn, except the fact that the soldiers come and take you away?

A. I know of nothing like that in the law. In fact, I don't believe it is true.

Q. Don't you know that the only sentence provided for in this so-

called conscription law is the sentence provided for non-registration under that law?

A. I think the direct contrary is the truth. I think there are other sentences provided in the law.

Q. There is one in regard to liquor and immoral women around the camp grounds, but outside of that do you know of any other?

A. You ask me that question?

Q. Yes.

A. I do not recall right now.

Q. Now, you read this law, didn't you?

A. I read it when it was passed, upon the day it was passed.

Q. You were thoroughly familiar with all of the provisions of it?

A. Fairly familiar, not thoroughly. I am no lawyer. I read it as one would read a newspaper article.

266 Q. What was the purpose of your reading that act?

A. As a matter of news, to inform myself.

Q. I will ask you whether or not you read it in order to see how close you could come to complying with that law and not comply with it and still not have the policeman pick you up?

A. Certainly not. I read it as a citizen would read it, in order not to violate the law.

Q. Do I understand you correct, that you said this: "And so we are willing today to take those jail sentences, and because we are willing—because we are willing to take those jail sentences, we say to you that you have full rights to do one of two things upon this matter of conscription."? Is that correct?

A. Is that continued from your recent utterance?

Q. Yes.

A. I want to say that I refuse to be placed in the wrong light before this jury. I am not going to answer "Yes" or "No" to certain extracts of my speech because one sentence conforms to another and there are a good many sentences I said which are not there, and I am not going to answer "Yes" or "No" to certain extracts which you may make in order to try to incriminate me.

Q. I will read it all then.

The Court: When the District Attorney puts to you a question and asks you if upon that occasion you made a statement  
267 of that kind, it is your duty to answer the question. If you do not remember or if you are unable to answer it as put to you, it is your privilege to say so.

Q. I understand you to say that all that you said in your speech over there was against conscription, that it was not against the question of registration or not registering?

A. My speech over there was against the conscription law, in an attempt to raise sentiment against it so that we may have a chance to repeal it.

Q. And you advised no one there to refuse to register?

A. I certainly did not.

Q. You did not discuss the question of registration?

A. I did.

Q. How far did you discuss it?

A. I discussed, in explaining it, that if they did not register they would have to take jail sentences.

Q. And that is as far as you went?

A. That is as far as I went.

Q. I will read on now, continuing from where I read a few moments ago: "You can either register and run a chance of being drafted or you can refuse to register and go to jail. Applause and cries of "Jail, Jail." You have a right to go to jail, don't you know? You, brother, don't you know that you have a full right to go to jail if you want to? You have just as much right to refuse to register

and go to jail as the government has a right to say that you  
268 shall register and go to murder. The question is, of course—

you may applaud here this afternoon—but after a bit the question will be this: How many of you will have moral courage enough to refuse to register on June 5th? That's the question. That's the question, friends. The conscription law and its success, understand—the conscription law and its success depends in a measure upon the fact that thousands upon thousands will refuse to register. Do you know that? Any young man within the age limits who does not grant the Congress of the United States the right to say that he shall go to war without first giving him a chance to say whether he wants to go or not, such a young man has his first opportunity to make a protest against conscription by refusing to register." Did you say that?

A. No, sir. The style of that is not at all the style that I would use in making a remark of that kind, of that nature.

The Court: Your answer is that you did not state that?

The Witness: I did not state that as he read it, no, sir; not under any circumstances did I say what he read.

Q. Did you say it in substance?

A. Not in meaning.

Q. Did you say it in substance?

A. Not in meaning, I answered.

Q. Then Mr. Farasey fixed up this typewritten record, did he?

269 A. I claim he did not get a record when I was speaking on account of the great moving about of the audience.

Q. If he did not get it all, and you did not say that, then Farasey must have put this in here?

A. If he did not get it all, he fixed it up, what he did not get, later.

Q. You want the jury to understand that this stenographer who was on the witness stand here fixed up this record with something that you did not say in this speech over there on the Public Square?

A. I want the jury to understand Farasey himself testified that he took the notes with very great difficulty, and I know he did, and that is what I want the jury to understand.

Mr. Wertz: I would like to have an answer to my question.

The Witness: I think that is an answer. I want the jury to

understand, in other words, that Mr. Farasey could not take the notes in the position he was in and have those notes come before this court as accurate testimony of what I said.

Mr. Wertz: I would like to have an answer to the question.

The Court: I think the witness has answered that he did not say in substance, or at least in meaning, what Mr. Farasey has transcribed as his statement. I think he has answered the question.

Q. You also say that you did not say to Mr. Lind over there in the jail that the way you differed from Hayes was because Hayes believed in complying with the law and you believed in violating the law?

A. I never answered "Yes" to that question. I have got too much sense to answer "Yes" to such a question before a prosecutor or before a Federal agent.

Q. Now, do you know what you were arrested for?

A. When?

Q. When they pulled you off of the block over there, what you were doing when they pulled you off?

A. I never knew what I was arrested for; I did not know until an hour or an hour and a half afterwards, when they placed a charge of disorderly conduct against me and being with a disorderly assemblage.

Q. Everything was peaceable up to the time of your arrest?

A. Except for the enthusiasm and jostling about of the audience.

Q. And at the time of your arrest there was a near riot and all excitement?

A. No, sir, just enthusiasm, applause and shouting.

Q. The crowd followed you?

A. That was after the arrest.

Q. These circulars similar to Government's Exhibit No. 2—this is marked "Government's Exhibit No. 27" which was used in another case—

271 Mr. Sharts: I want to interpose my objection to the introduction of this evidence.

Q. Is that the package you sent out from 1291 Cook Avenue, Lakewood, Ohio?

The Court: You object to that question being asked?

Mr. Sharts: I object to the introduction of any such evidence.

The Court: I will overrule the objection. As I understand it, the question is whether that is a package of circulars that he sent out?

Mr. Wertz: Yes.

Mr. Sharts: Enter our exception.

Q. Is that the one?

A. I cannot state whether that is the one or not.

Q. Come down and examine it.

A. An examination would not do me any good. I send out hundreds of packages a week over from the state office and I am sure I don't know whether this is mine or not.

The Court: To whom is that package addressed?

Mr. Wertz: The package is addressed to Ammon A. Hennacy.

The Court: Is the address in writing?

Mr. Wertz: Typewriting, "General Delivery, East Palestine, Ohio," and on the corner of that address is "The Socialist Party, 1291 Cook Avenue, Lakewood, Ohio."

Q. And you sent a letter to the postmaster——

272 The Court: He examined it, but I do not think he answered your question whether that package had been sent by him to Hennacy at that address.

The Witness: Packages like that and similar, probably that, were sent by me to Mr. Hennacy before the conscription law was passed.

Q. Do you remember when the last one of these packages was sent out?

A. I should judge the first half of May.

Q. The first half of May?

A. Yes.

Q. Now, referring again to Government's Exhibit No. 4, you say here: "Lakewood, Ohio, May 25, 1917. Postmaster, East Palestine, Ohio. Dear Sir: About a week ago two packages of printed matter were addressed to the East Palestine Post Office in the name of A. A. Hennacy, General Delivery. Mr. Hennacy informs us that he only received one package and that it had been opened." Does that recall to your mind that that package might have been sent out after the 18th day of May, 1917?

A. Under no circumstances. The letter is dated the 25th, and I stated "about a week ago." It was probably ten days ago that I sent that package to Mr. Hennacy.

Mr. Sharts: Enter an exception to all these questions.

The Court: All right.

Q. Why are you so positive that you sent none out after the conscription law was passed?

273 A. Because I refused to fill orders for hundreds of thousands of those leaflets, after the conscription law was passed, as the State Secretary of the Socialist Party of Ohio.

Q. You sent them out right up to the time it was passed?

A. I did not send them out up to some days before the time it was passed.

Q. About a week before the 25th would make the 18th day of May, 1917, if your calculation is correct here, would it not?

A. I say "about a week." I do not say "a week." It may have been ten or twelve days.

Q. So it may have been a day or two more than a week, one way or the other?

A. It would not be less than a week, I am positive of that.

Q. Do you know as a matter of fact that that package did not reach the postmaster at East Palestine until the morning of the 22nd day of May?

A. I don't know when it reached there. By the looks of it, I would not be surprised if it never had reached there.

Q. Now, if you were present at that meeting of the Socialist Party out at the hall on the 13th, Sunday afternoon, when that resolution was adopted "And recommend to and urge all members of the Party, and the workers generally, that they refuse to register for conscription and pledge to them our financial and moral support in their refusal to become the victims of the ruling class," I will ask you if you had any plans or made any plans or any arrangements to render any of these parties financial or moral support in their refusal to register?

A. Since when? Since the law was passed?

Q. Yes.

A. Since they have been arrested?

Q. Yes.

A. The state organization has so far not paid out one cent for the support of anybody who has refused to register.

Q. Of course, if the law did not pass, there would be no occasion for them to refuse to register, would there?

A. I suppose not.

Q. This letter says: "Lakewood, Ohio, May 25, 1917. Post Master, East Palestine, Ohio. Dear Sir: About a week ago two packages of printed matter were addressed to the East Palestine post office in the name of A. A. Hennacy, General Delivery. Mr. Hennacy informs us that he only received one package and that it had been opened. I write you now to request that you forward the other package in your possession to A. A. Hennacy, General Delivery, Martins Ferry, Ohio. If this is not done, and if by tracing we can find that you interfered with the delivery of this second package to the addressee, we shall immediately refer the case to our attorney and institute the proper proceedings. Yours respectfully, A. Wagenknecht, State Secretary. Sufficient postage for forwarding the package is enclosed." Is that a correct copy of your letter?

A. That is about correct, yes, sir.

Q. Now then, if, as you say, you sent none of this literature out after the conscription law was passed on the 18th day of May, 1917, why do you say to this postmaster under date of May 25, 1917: "I write you now to request that you forward the other package in your possession to A. A. Hennacy, General Delivery, Martins Ferry, Ohio?"

A. Because Mr. Hennacy was sent a good deal of literature from our office, not only this kind but also books on socialism, and the entire reference in that letter may be to books on socialism rather than to this literature.

Q. Hennacy was distributing this literature, wasn't he?

A. And he was selling socialist books.

Q. And you sent him this literature to be distributed, didn't you?

A. Before the registration law was passed.

Q. And you wrote him on the 25th day of May "I write you now to request that you forward the other package in your possession to A. A. Hennacy, General Delivery, Martins Ferry, Ohio," didn't you?

- A. That does not prove it refers to this package.  
 Q. I did not ask you that. Didn't you so write him?  
 A. I wrote him that, yes, to the post master.

276 Redirect examination.

By Mr. Sharts:

As to my understanding at that meeting of May 13th, before the law was passed, about whether or not it was to be a compulsory registration, and being an officer of the party, I tried to make it my particular business to find out the penalties for not registering, because the socialists at headquarters and throughout the state were asking me for information. Up to the 13th of May I was laboring under the understanding that it would be a voluntary registration, because President Wilson himself claimed in one of his proclamations that this entire act of conscription was a voluntary act, and so I labored under the opinion that this was a voluntary registration. I thought you could register or could not register, just as you pleased. I sent a telegram to our socialist congressman Meyer London, asking him about whether or not a penalty was attached for failing to register. Undoubtedly there is a transcript of this telegram at the Western Union office which proves it. I did not receive an answer from him until I received a copy of the law, and I read of it in the newspapers, and at that time I was made aware of the fact that there was a penalty attached to the law and if you failed to register the penalty was that you would be put in jail for a year or less. From the time I discovered that there was a penalty attached for a refusal to register I have not sent out or had anything to do with the resolution which has been read to me here. (Referring to "Government Exhibit No. 1").

277 We had a conference at socialist headquarters in Cleveland of the executive committee together with some members of the state executive committee. We discussed the matter fully and the result of that conference was that no literature be distributed and sent out subsequent to the passage of this law, and this conference was held shortly before the law was passed. At that conference I think Tom Clifford, Mr. Ruthenberg, Mr. Cheel and Mr. Bronstrup were there and probably two or three others. Mr. Clifford is state chairman and Mr. Ruthenberg is national committeeman, and these are the state officers who were present at that conference. As to whether I had a conference with Mr. Ruthenberg previous to the meeting on the Public Square on May 20th, I talked to him very often during the week. It was generally understood before we went to the meeting, and all meetings after the law was passed, that the tenor of all the speeches be within the law. As to the position of the socialist party with regard to obedience or disobedience to the law, the socialist party is a political organization which seeks to gain power through the ballot box and seeks to institute a different form of government by peaceful and lawful means. The letter which Mr. Wertz read which I sent to the postmaster is a form letter. Since the war has been



declared by this government the socialist party has had very much trouble with its mail, not only its second and third class mail but its first class mail. Letters have been opened. We do not get many letters, and the proof of it is on the table here. There is 278 copies of letters that are in the hands of the prosecution which went through first class mail and has been opened and brought into court. Now, this form letter has been sent out in very many instances to postmasters who have had the temerity to hold up our mail, and I sent this letter to the postmaster at East Palestine just as a matter of form, because I had heard, directly or indirectly, that some literature or some mail of some kind was held up by the East Palestine postmaster. At the time I sent that letter, I knew it had something to do with something I sent to Mr. Hennacy, but whether it was this package or whether it was a package of our socialist pamphlets and literature, which we sell at retail in the field, I do not know.

Q. Now in regard to your remark during your speech about those who failed to register would go to jail and those who did register would eat gravel or something that way, I wish you would explain to the jury in what sense you were conveying that statement to the audience?

A. That I would like to explain, yes. I did not use the word "registration," however. Even the transcript will show that I made no reference to registration. I meant that pioneers in a movement that was a radical movement and that sought to gain power always were subject to prosecution by those who were in power, that history proves that, and I tried to attempt to show the audience that when a movement like the socialist party movement attempted to instigate opposition to the war and attempted to repeal the conscription law, the parties in power prosecuted the socialist party 279 and threw some people in jail. In fact, we have had a good many socialists jailed for simply circulating the petitions to repeal the conscription law, thousands of which have been sent out by me throughout the state. We have had socialists arrested for circulating a petition to repeal the conscription law, and that is what I referred to, and that reference was made particularly to pioneers, pioneers in our movement, who were arrested. Now then, there is another remark in the transcript which I would like to explain, and that is the remark which reads: "Now, friends, you have the right to go to jail." All of my remarks were not secured at that time. That remark was made in a rather jocular manner. I was joking with the crowd. They were all laughing, and I was simply saying to them, as I would to a man next to me: "Of course, friend, you have a right to go to jail. If you feel like going to jail, go." It was not an inducement to him to go to jail. I was simply talking with him and saying that the jail awaits him if he attempts to break the law.

## Recross-examination.

By Mr. Wertz:

I am sure I was over there on this particular Sunday afternoon when the stenographer made this account of my speech.

As to whether, because I am pioneering that is the reason I keep my eye on the policeman, that may be one reason. We have been arrested for a good many things in our career which had  
280 no basis in any fact or had no reason to find any cause for prosecution.

I do not know whether or not the Government opened my mail in order to get this letter which I wrote to the postmaster at East Palestine, Ohio, directing him to forward these circulars to Mr. Hennacy. I sent that letter to the postmaster. I have no proof that the government did not open anything in this case to get evidence on me. I have proof that they did in this package here. (Referring to "Government's Exhibit No. 27"). I account for our trouble in getting our literature through the United States mail through the officiousness of the small postmasters throughout the state. I have no direct evidence of any of our mail being held up here in the city of Cleveland, or any of these circulars. The local socialist paper was held up one or two weeks. As to my statement that all over the United States our publications were being held up, they were being held up for a week or two and then a committee visited Washington and the result has been that all of them are now again publishing and using the mails.

281 Thereupon the defendants, further to maintain the issue upon their part, called as a witness in their behalf the defendant CHARLES E. RUTHENBERG, who, being first duly sworn, testified as follows:

## Direct examination.

By Mr. Sharts:

My name is Charles E. Ruthenberg. I am at present secretary of the socialist party of Cleveland. During the past three years I have been purchasing agent for the Printz-Biederman Company at Cleveland. Before that I was engaged as a salesman with the McCray Refrigerator Company, Cleveland. I am thirty-five years old. I was born in Cleveland and have lived all of my life in Cleveland. I have for the last eight and one-half years been secretary and organizer of the socialist party. I have three times been a candidate for mayor, a candidate for governor, a candidate for United States senator and its candidate for Congress in the 20th District.

I have not at any time aided and abetted anyone not to register. I was present at a meeting in socialist headquarters on May 13th. There was a resolution with regard to conscription passed at the meeting of May 13th, but it was not at the time of the passage of such resolution a legal meeting of the socialist party. The meeting adopted a resolution urging, recommending, persons not to register.

My understanding at the time this resolution was passed, with regard to the method of registration, was based upon the proclamation of President Wilson that the conscription would be a voluntary offering of the youth of the nation, of themselves, for the army. I was not familiar with any provision for a penalty for not registering. There was no action of the socialist party of Cleveland in reference to Exhibit No. 2 of the Government after the law was passed. The party absolutely took no action and was not concerned with matter in any way after the passage of the conscription law. There was a conference, with reference to that resolution, of the speakers preceding the meetings of May 20th and May 27th. After the conference I made a speech on May 20th on the Public Square, following Mr. Baker. At that meeting I made no reference to the position of the socialist party on the matter of registration. I mentioned the fact that there was to be a registration for conscription in my speech and then I discussed what conscription meant to the youth of the nation.

Mr. Wertz: When was this?

Mr. Sharts: This was on May 20th.

Mr. Wertz: There was no evidence offered that we made any charge against him on May 20th. This is confined to May 27th.

Mr. Sharts: Mr. Schue testified that he had a recollection, not by any means clear, it is true, that Mr. Ruthenberg followed Mr. Baker on May 20th and spoke.

The Court: Didn't he not also say that he did not listen to Mr. Ruthenberg?

Mr. Sharts: But, if Your Honor please, it was part of the meeting of that day. It was a part of the program in which Mr. Baker took part, and I claimed that it would be competent, if on no other ground, because it was following out a fixed program of which Mr. Baker was only a part.

The Court: If my recollection is right, Mr. Schue testified, as I recall, that he left at the time Mr. Baker finished speaking and did not hear Mr. Ruthenberg's speech, Mr. Ruthenberg's speech being subsequent to that of Mr. Baker. I will hold that it is not competent, as to the 20th, you understand.

Mr. Sharts: Enter our exceptions.

Q. And did you hear Mr. Baker's speech on May 20th?

A. I did.

Q. I wish you would state to the jury, as well as you can, briefly, on what subject Mr. Baker spoke?

A. Mr. Baker began with an examination of the forces in present day society which brought about the concentration of wealth under the present industrial system. He shows that, as the result of the existing industrial system, wealth was gradually concentrated in the hands of a very small class of society, which became the dominant and ruling class in society. That this class made its profits through the exploitation of the workers in shops and factories. That because of this exploitation of the working class the workers themselves were not able to buy back the

goods which they produced through their labor power, through their brain and muscle——

Q. I believe you can set forth the substance of his speech briefly.

A. That is what I was doing.

Q. So as to come to the portion about conscription.

A. And he continued along that line, showing the forces that brought war into the world, showing that war, as it existed in Europe, was the inevitable result of a system of producing wealth for profits. He continued with showing the forces in Europe which had brought about the war, and showed that those same forces, the interests of the capitalist class, making profits, were the cause of the present war in which this nation was involved. Then he proceeded to a discussion of the conscription law, showing that the Government of this country——

The Court: On the discussion of the conscription law, it probably would be desirable for you to state what he said as near as you can.

The Witness: I am doing that.

A. (Continuing:) He proceeded to the discussion of the conscription law, and said the following: That the Government of this country, through the influence of the ruling class, has forced  
285 this nation into a war which has been found to be so unpopular among the people that it has been unable to recruit the soldiers to fight that war without resorting to conscription. And so he said we are now in danger of being sent to the trenches of Europe against our will and wishes. We are in danger of being taken away from our homes and sent to do the work of the ruling class of this country, to fight for its profits, to kill human beings, because men desire to make money, whether we desire to go or not. And at that point he was asked by some one in the audience: "What shall we do about it?" A question to that effect, and he went to relate an interview which he had with a reporter at Akron which, in substance, was as follows: He said the reporter asked him why he was not wearing a flag in his coat lapel, and he replied and asked her whether she wore such a flag before the war was declared, and she said: "No." "Well," he answered, "I believe in Old Glory. I am proud of Old Glory," he said. "I honor it as every man should honor it, but I do not honor it because it stands now for war. I would rather wear it in time of peace, when it stands for helpfulness, stands for making the lives of human beings better, than to wear it only in time of war, when it stands for killing human beings." And the reporter asked him what he would do if after registration he was conscripted, and he replied that he hoped that  
286 if he was taken against his will and wishes to be sent out of this nation to kill other human beings of other countries, with whom he had no quarrel, toward whom there was no enmity in his heart, toward whom he would rather hold out the hand of comradeship and friendship, and work with them for a better world—if he was taken against his will, that he hoped he would have the courage at that time rather to be stood against a stone wall

and riddled with bullets than to do this work of the ruling class. That, in substance, was his speech.

Q. What reference, if any, was made by him to registration?

A. Only mentioning the fact in his speech that registration was to take place, and that the youths were to be conscripted for this work of killing human beings.

Q. And did you hear him advise any one with regard to registration?

A. I did not.

Q. I will ask you now if you were present at the meeting of May 27th?

A. I was.

Q. Do you recall the speakers who preceded you?

A. Yes.

Q. Do you remember who was the first one who spoke?

A. I arrived at the meeting during a speech being made by Max Hayes. Mr. Wagenknecht followed Max Hayes and I was the final speaker at the meeting.

Q. Do you recall the substance of Max Hayes' speech?

A. Yes. I can state it.

287 Q. At least that part of it with reference to which Mr. Wagenknecht spoke afterwards?

A. I can sum it up in a very few words. Mr. Hayes spoke at length in regard to the conditions under the capitalist system, through which the workers were robbed and exploited and compelled to suffer misery and hardships, and then proceeded to a discussion of the forces which brought about the war in Europe, and talked in regard to the present war, saying that it was part of this general force in society which brought these evil conditions into existence. He then dwelt upon what the workers of Australia had done, and showed that in Australia the government had been compelled to submit the conscription law to a vote of the people and that the Australian workers, who controlled the government through the Labor Party, had voted down the conscription law when they had a chance to vote upon it, and then he showed that the Government of the United States was not so democratic as Australia; that the people of this country were going to be compelled to serve in a war without having had a voice in deciding whether there should be such a conscription law on the statute book. He showed that the forces in control of this country were autocratic, because they placed such a law on the statute books against all the spirit of the history of this country, and in spite of the will and wishes of the people expressed at the last election. "But," he said, "It is the law. What can we do? We  
288 have not had sense enough," he said, "to organize our power yet. We have not had sense enough to get together to take control of this government for ourselves, so we will have to obey the law while it is in existence," but he urged that we get together, that we organize, for the purpose of taking that law off of the statute books at the earliest possible moment.

Q. When Mr. Wagenknecht——

A. By the way, there is another point which I wish to add to my

statement of Mr. Hayes' speech, which is vital. I referred to it in my own speech. Mr. Hayes in his speech, in saying that the people had not had sense enough to organize, repeatedly referred to the Socialist Party as an insignificant minority. He referred to the Socialist Party as something weak, something which was not very strong, which had not thus far played a great part in present day society, in a spirit which grated upon my mind, and no doubt upon others in the audience.

Q. Now, when Mr. Hayes had finished, I believe Mr. Wagenknecht was the next one ?

A. Yes, sir.

Q. Do you recall the incidents of Mr. Wagenknecht's speech and arrest ?

A. Yes.

Q. I wish you would state the substance of Mr. Wagenknecht's speech.

289 A. Mr. Wagenknecht began with a reference to the speech of Mr. Hayes, referring to the fact that the spirit of his speech was a minimization of the power of the Socialist Party, of the position of the Socialist Party, and that he resented that, that Mr. Hayes had not been in touch with the Socialist Party of recent years, and that, therefore, he was not thoroughly familiar with the position and activities of the Socialist Party, which no doubt was the cause of his speaking in the slighting manner of the socialist movement at the present time. He then went into a discussion of the war, showing briefly that it was a capitalist war, and then turned to the conscription law, and pointed out that a conscription law had been passed and was on the statute books, and stated that this law provided that a man must either register or go to jail.

Q. Was it at that time he was arrested ?

A. During the latter part of the remarks he was taken from the stand or platform.

Q. During the time Mr. Wagenknecht was speaking, did you hear him give any advice to anyone as to whether he should register or not ?

A. I did not.

Q. You have heard the stenographic notes of the young gentleman who testified, Farasey ? As those notes were read, I will ask you whether or not that impressed you as a correct rendering of the speech of Mr. Wagenknecht ?

290 A. It did not so impress me, and I know of my personal knowledge that the stenographer asked people in the audience, "What did he say ?"

Q. You observed the stenographer while Mr. Wagenknecht was speaking ?

A. Yes, sir.

Q. Did you notice where he stood ?

A. He stood at the right of the speaker, about twenty feet away from the Stone platform.

Q. Did you notice whether he was in company with others or alone ?

A. There were people around him. I don't know who they were.

Q. You say that you have personal knowledge of the fact that he was asking others?

A. I have seen him repeatedly during these meetings turn to a person next to him and ask—at least, the entire action indicated that he asked one question repeatedly. When a man is writing and turns and speaks and asks a question, the indication was that he asked: "What did he say?" and he got some sort of reply.

Q. After Mr. Waggenknecht's arrest, I believe, you took the stand?

A. I did.

Q. Who was it that introduced you?

A. Mr. Hitchcock.

Q. And you then made a speech?

291 A. I did.

Q. I wish now you would state to the jury—by the way, that speech, it has been testified by Mr. Farasey, he took down your speech and you heard those notes read in court?

A. Yes.

Q. I will ask you whether or not that impressed you as a correct rendering of your speech?

A. It was not. I can state one thing in regard to that speech that I know was absolutely incorrect. He put in my mouth, in connection with an utterance, saying that I said that we would have to do the "base, dirty work of the ruling class." Now, that word "dirty" in that sense is one that I would never use, that when he read it — set my teeth on edge, and made a shudder go through my entire body, because it was so repulsive to me in that connection. It is a word that I would never use in any speech I make because I do not use that kind of language.

Q. I will ask you now, Mr. Ruthenberg, to give to the jury as well as you can recall it, a correct restatement of your speech.

A. The speech which I have made, of course, was one which I had worked out mentally, and the various propositions contained in it were something I am thoroughly familiar with, so that I believe, while I cannot state each word exactly, I can state that speech in its

292 general meaning as it was delivered on that day. I began it this way: Comrades and friends: We have here this afternoon

witnessed an incident such as has happened in Russia on many occasions. No doubt, under the reign of the Czar there have been many times when attempts have been made to stop the telling of the truth. There have been many occasions when those who are the servants of the ruling class in society have tried to prevent those who were fighting for the liberties of the people from uttering the things that they desired to state, and this afternoon we have here in this United States witnessed a thing which we have so often condemned in Russia, the land of darkness and dread things. But, in spite of this thing having taken place, I will proceed with my speech just as I proposed to make it to you before this thing happened. I am going to present to you my ideas, my thoughts, in regard to the present war and the things which the people of this country face at the present time. I am not going to appeal to your emotions, I am go-

ing to submit the facts for your consideration. I do not believe in appealing to your sentiments. I want you to consider the truth as men and women, thinking men and women, who wish to make this world a better place to live in for all of mankind.

A few days ago there was a call issued by certain workers for a conference in Stockholm, to be held for the purpose of endeavoring to find a common basis for ending this horrible war, for ending  
293 this thing which has cost the lives of millions of human beings, and through which other millions have been crippled and maimed and smashed beyond recognition as human beings—a conference was called by certain people to try to bring an end to this war. I am adverting to this thing now because it shows us how much truth there is in the statement that this nation is fighting a war for democracy. This conference was called by the workers of Belgium, the workers of Denmark, the workers of Norway and Sweden, to hold an international Socialist Conference, to find a basis for terms of peace and end this bloodshed and murder of human beings. All of these nations—the Belgian workers, the workers of France and of Germany and of Austria and Russia and England, all of the countries of Europe—yes, even Turkey and Bulgaria—are sending their delegates to this conference, to see if they cannot end this war, and this awful murder of men and women, but there is one country which will not be represented at that conference. That is a country which is claiming that it is carrying on a fight for democracy. That is these United States, which has refused passports to a conference which has as its purpose to bring peace into the world. That is the best answer to the question: whether we are fighting a war for democracy or not.

My friends and comrades, this is not a war for democracy. This is not a war for freedom. It is not a war for the liberties of  
294 mankind. It is a war to secure the investments and the profits of the ruling class of this country, and I am going to show that to you. I am going to give you the facts so that you can judge for yourselves. Prior to the election of last November, from the date of the St. Louis convention of the Democratic Party to the November election, the spokesmen of this Democratic Party went up and *and* down this country, from the Atlantic to the Pacific, from the Canadian border to the Gulf of Mexico, and they appealed to us to support and re-elect the present administration, to put them back into office, and what did they tell us was the reason why we should re-elect the President and Congress? What did they offer as their chief ground for re-election to their places in the government of this country? You know as well as I know that the chief appeal of the Democratic Party during this campaign was the cry: "He kept us out of war." He kept us out of this horrible thing in Europe, this chasm, this shambles, in which all that is good in our civilization is disappearing, in which all the kindness and humanity and the spirit of brotherhood which has grown up in the world is being wiped out of existence. The Democratic Party asked us to re-elect its candidates for President and its Congress because we knew of this horrible thing, because we knew of this bloodshed, this crippling and maiming of human beings, and because we had turned back from it aghast,



295 and cried out in horror at this awful thing that was happening in Europe, and they said: "We kept you out of this war, so put us back into office." And what do they say now? They say now that they kept us out of a war for democracy and freedom. My friends, judge for yourselves. Judge yourselves whether what they said before election is the truth about this matter or what they say now is the truth about this matter. I am here to say to you that what they said before is the truth about the matter, and that the only reason we are in this war now is because it is to the interests of the ruling class, the capitalistic class, this country to have us in this war, and I am going to show it to you. I am going to prove it to you. I am going to submit facts to you to prove this assertion.

In January of this year, according to the reports of this ruling class itself, there was a trade balance of five billion dollars in favor of the American capitalist class. In other words, they had exported to Europe, they had sent out of this country of the wealth which we produced, which the sweat and labor of the people of this country brought into existence. They had sent out of this nation five billion dollars more than had come back into this country, and for this they had received gold, they had received stocks and bonds, they 296 had received other things in exchange, and in the Spring of this year this enormous traffic—and I say to you that never in the history of the world has there been a class which deserves more condemnation, which deserves more criticism, than the American capitalist class which saw in this struggle in Europe, in this killing and maiming and murdering, this bloodshed, this destruction, this wrecking of all that is good and beautiful—which saw in this thing only an opportunity for profit—I say to you that never in the world has there been a class which deserves more condemnation than the American capitalist class, which desired nothing more than to make profits out of the murder of their fellow human beings, and, when they saw their profits in danger through the fact that the German submarine menace became more serious, they found it necessary to use their power over the government of this country to hurl this nation into that war, not to fight for democracy, not to fight for freedom, but to fight for their profits, to fight for the loans which Morgan & Company and their fellow capitalists had made to the Allies. They were ready and willing to send the youth of this nation into this horrible nightmare of murder, to kill and to be killed, in order that their profits might be saved. That, my friends, is the cause of this war.

And they have done more than that. They have gone farther than that in this thing. For many years—yes, decades of time—it 297 has been the spirit of this nation that compulsory military service was only possible in an autocratic country. We have looked across the waters and said that the people of Germany cannot be free because they are conscripted and forced to fight the battles of the ruling class. We have said the people of France and of Italy and of Russia cannot be a free nation as this country is a free nation, because they can be compelled to shoulder a gun and murder their fellow human beings, and today the government which has appealed

to us because it kept us out of war, from which we have heard many beautiful platitudes about democracy, has put this most reactionary and autocratic law, the conscription law on the books of this country.

My friends, I want to give you a picture of what conscription means.

The Court: Will it disturb you if we suspend at this point?

The Witness: It will not.

The Court: You will resume at the point where you have stopped. We will take a recess.

(Recess.)

The Court: You may resume your testimony at the point where you left off.

A. (Continuing:) I want to give you this picture by illustrating it through a story which has come to us from Europe, from  
298 one of the countries which is now involved in this war. A young man coming from a humble home had gone to this war, gone out into the struggle, into the bloodshed, into all that makes up this horrible thing we call war, and he had done what the newspapers said was a heroic deed.

A. (Continuing:) This young man, who had done what was called a heroic deed, was returning from the trenches to his home city on a furlough.

The Court: Of course, you will understand that you are not expected to make a new or different speech, but to repeat, as exactly as you can, the language you used on that occasion. You understand that?

The Witness: I am making, as I recollect, the speech I made on May 27th.

A. (Continuing:) This young man, returning to his home from the trenches, after having done what was called by the newspapers a heroic deed, namely, having killed in a struggle, single handed, three of his enemies, was to be welcomed at home by a crowd at the depot, by music and by all of the other things that go to make up the sham patriotism of murder and warfare. And the people waited for him at the station. The train came in and they looked for him to welcome him with glad acclaim, but he was not to be  
299 found. He did not come from this train. He was not seen to leave it. And the audience, the people that assembled there, did not find him to welcome him as they expected. But he had himself left the train at a station on the outskirts and by the back alleys reached his home, where he found his mother—his mother to whom he went first, and she, too, was about to honor him, about to state her gladness for his heroic deeds, state how much she admired his courage, and when she started to do that the young man laid his head down in her lap and put his face on his hands and began to weep and said, "Mother, I cannot think of it. I cannot think of this horrible thing I have done. I cannot think of the look of that young man's face,—a young man just as I, a young man who might have been my comrade and friend, a young man who might have been a happiness and joy to me—when I put that

bayonet in him and took his life from him. Do not talk to me about the glory of the deed. Do not talk to me about the bravery of the deed. It will be the curse of my life for the rest of my days that I murdered a fellow, human being thus." That is what conscription means to the youth of this nation. That is what it means to them to be taken from their homes without their consent and sent out to the trenches to murder and be murdered for the profits of the ruling class of this country. That is what the government of this nation has done in order to put this statute on these law books of this country—a statute which, in my opinion, is entirely contrary to the fundamental law of this country, the constitution of the United States.

If law means anything, if words mean anything, when the constitution says that there shall be no involuntary servitude in this nation except as a punishment for crime, it forbids specifically taking a man against his will and making him fight and murder his fellow human beings. Yes, one of the foremost statesmen in the history of this country, Daniel Webster, as long ago as 1814, when the Congress of the United States was considering the passage of a conscription law, arose in the House of Representatives of this land and denounced it as "contrary to the constitution of this country, saying, 'Where do you find it written in this document, this right of the government to take the young men of the country out of their homes and send them forth in any war which the wickedness or folly of the government may declare? Where has this power lain hidden which now for the first time comes forth in this baleful aspect?'"

And thus I say to you, who are gathered here, those of you who believe in humanity, who believe in brotherhood, who believe in the beautiful and good things of life rather than in bloodshed and murder, that we must use our strength and our power to wipe out of existence, to put out of office, this government, which, contrary to the wishes of the people of this country, has put this law on the statute books. And I say to you further—I say to you here, now, believing as I do, that war is a horrible thing, believing with all my heart and soul that to go forth in war is to murder your fellow human beings, believing, as I do, that this war is a war in the interests of the ruling class only, believing, as I do, that this war has come into existence because the class in power and in control of the government of this country desires to continue to make profits out of the murder of human beings, and to protect those profits which they have invested in loans to one side in this war—I say to you, as I have said before from the rostrum on this Public Square, that I refuse to become the victim of the ruling class. I said to you before I knew that the ages specified in this law would not include me—I said to you then that I would refuse to be conscripted, that I would refuse to shoot my fellow human beings, and I say to you now that there is no power on the face of the earth that could make me shoulder a gun and go forth in the world to murder another fellow human being of mine. There is no power in the government of this country that can say to me, with the conscientious objections which I have to this war and to the work of the

war, that I shall murder another human being, and, rather than commit that act of murder, than to be forced into that act of murder, I will permit the government to riddle me with its bullets and die in this position than to murder another human being.

My friends and comrades, when I speak to you thus, I am speaking to you in all seriousness. I am speaking to you with that spirit which has been shown by those ten thousand men in England who are today lying in English jails because they refused to go to war, because they refused to permit a government to conscript them. I am speaking to you as Karl Leibknecht spoke in the German nation, as he spoke in the Parliament of that country, when he denounced the war as a war of the ruling class and stated his unalterable opposition to that war. And I say to you that, if you are inspired with this ideal, which is the hope of the future, if you are inspired with this desire to build a better world, then you must stand with the Socialists. You must fight with the Socialists against war. You must use all of your strength and power to bring the day when we can wipe this law—which thus violates the dearest right  
 303 of personal liberty, which would cause a man to kill another human being—until the day comes that we can wipe this law off of the statute books by a people rising in their might, taking control of their own affairs and putting out of office a government which has betrayed them into this thing.

My friends, they have said of us Socialists who stand here before you that we are traitors, that we are street-corner traitors. I say to you that it is not the men and women who have dedicated their lives to upholding this principle of humanity, not the men and women who desired nothing but to bring brotherhood and comradeship and fraternity into the world, not the men and women who opposed this war before the election time and who oppose it now, who are traitors to the American people—but I say to you that it is the men who asked for their election, the men who pleaded through you to support them, because they kept you out of war, and then hurled you into the war, who are the traitors, if there are any traitors to the American people in this country at the present time.

We must organize our forces to meet the situation. We must organize our power to alter this situation. There is no hope for the people, of again bringing peace and humanity and the spirit  
 304 of brotherhood and the spirit of comradeship and the good and beautiful things into the world and ending all of this horror and misery and suffering and bloodshed, unless the people themselves organize their power and make themselves articulate. We can, by meetings of this character, by coming together here, five thousand people this afternoon, and protesting against this conscription law—we can tell the government of this country that we do not want this law and we demand that Congress repeal this law, and if this Congress of this country will not repeal this law—because we meet in mass meetings all over this country—for just as we are meeting here today, men and women are meeting in other cities, and just as we are protesting against war, so men

and women are protesting the world over—if we cannot make this government understand that the people did not want war, that they did not want conscription, then we must await the day until we can go to the election booths again and sweep that government out of power and elect men to power who will represent the wishes of the people and change this law and repeal this law, this traitorous act of the ruling class of this country, which has taken from the people of this nation the dearest rights of personal liberty, even to the extent of making them do murder.

And we of the Socialist Party are carrying on this fight.  
 305 We are here to carry on this fight. We are here to organize the people of this country for this struggle. We are working toward this end, that out of the chaos, out of the bloodshed, out of the horror of this war at the present time there may come a new society, a new world, a new organization of the people, which will end the cause of war by ending the private ownership of the industry which brings war into existence, which, in place of appealing to us in the shape of patriotism to do murder, will appeal to us to be friendly and comradesly and brotherly toward all other nations. For, my friends, there is no hatred in the hearts of the people of this country against the people of Germany. There is no hatred in the hearts of the English workers against the people of Germany, there is no hatred in the hearts of the French people against the people of Austria, or of the Russians against the People of Turkey. They are not trying to kill each other, they are not trying to murder each other, because they hate each other. It is a delusion which the lying prostituted press of this country has tried to put into our minds in order to trick and deceive us. The people of those countries would, if they were allowed to do their will, reach out to each other the hand of brotherhood and  
 306 fraternity. It is only because the commercial interests of the ruling class are at stake that they are thrown at each other's throats to murder each other.

We are here to fight to the end, to end this condition in the world, to build up this new society, to build up a new spirit in the world, to end war, to end murder, to end suffering, to end the destruction of millions of lives and billions of wealth and bring into existence this comradeship of the future, this brotherhood which must inspire the hearts and minds of all men, in which we will have fraternity and equality, and in which for the first time there will be reserved to the people those inalienable rights of life, liberty and happiness which the Declaration of Independence says is the fundamental right of every human being. We ask you to stand with us. We ask you to work with us to achieve this beautiful goal of Socialism, the brotherhood of man, for today, as never before, rings out in the world the cry of the poet of the social revolution:

"Come, shoulder to shoulder  
 E'er the world grows older,  
 The cause spreads over land and sea.  
 Now the earth shaketh and fear awaketh,  
 And joy at last for thee and mee."

"Joy at last for me and thee"—for the working class, and for the first time there will come into the world this new spirit  
307 of love, of equality, fraternity, happiness and peace.

The Court: That is as you remember it?

The Witness: That is as I remember the speech I made at that particular time.

Q. I will ask you if, during this meeting, there was any reference made by you to registering?

A. As I stated in this resume, I referred to it only that, "Soon the youths of this nation would be asked to register for conscription."

Q. State whether or not you gave any advice to any one on the subject of registering?

A. I did not.

Mr. Wertz: I object.

The Court: The objection will be sustained to that question in that form.

Q. State whether or not at this meeting and during this speech that you were making, or possibly any subsequent statements at that meeting—

The Court: No, at that meeting and in the course of that speech is the limit of the inquiry against him, I think.

Mr. Sharts: I think if Your Honor will remember the notes that were offered here of the stenographer, there was a reference to handing out cards, was there not?

The Court: That was in the course of his speech, I believe, that he was handing out pledge cards, and there was something said about that.

Q. Have you made any reference in this speech that you  
308 have here delivered to that subject?

A. I have not.

Q. I wish you would state what remark, if any, you made at that time?

A. At the time I was asking for support for the Socialist Party I handed out a card applications for membership in the Socialist Party.

Q. Have you any of those cards with you?

A. I have not.

Q. Do they contain on them any reference to registration?

A. They do not.

Q. Upon the close of your remarks, what next occurred?

A. I left the rostrum and proceeded to walk toward the police station for the purpose of visiting and finding out what the charge was against Mr. Wagenknecht.

Q. Had you at any time during your meeting observed the young man who was indicted with you on the charge of failing to register?

A. I have never seen him in all my life until today.

309 There was a conference of speakers held prior to both the meetings on the 20th and the 27th. Mr. Wagenknecht and myself were present at the conference on the 20th and at the conference on the 27th. Mr. Baker came to the City of Cleveland a number of days prior to the meeting of May 20th. I do not recall the exact date. I do not recall whether or not Mr. Baker was in the city of Cleveland at the meeting on May 13th. I do not recall any conference or meeting with Mr. Baker at which this resolution which was introduced here was discussed. There was no reference made at any of the meetings that Mr. Baker held and at which I was present as to any such resolution.

I attended the convention which drafted the proclamation and war program of the Socialist Party which has been introduced in evidence as "Defendants' Exhibit No. 1" and was a member of the committee which wrote it. I personally wrote clause 2 of the program, dealing with the question of conscription.

Q. Did the committee of which you were a member at the convention at any time consider the matter of registration?

A. I did not.

Mr. Wertz: I object.

The Court: The objection will be sustained to that.

Mr. Sharts: If your Honor please, I think you have already ruled with regard to intent, that it is proper for us to introduce circumstances that would tend to show what the intent of the speaker was in any remarks.

310 The Court: I have ruled that he may say what his intent and motive was, but what you are inquiring about is entirely too remote and irrelevant to that inquiry, as I view it.

Mr. Sharts: If Your Honor please, here is the position I would like to make clear that I am taking in this matter. The intent with which he uses the word "registration" in his speech is more or less connected with his position as a speaker for the Socialist Party and as a national committeeman of the Socialist Party, and in connection with the program and proclamation of the Socialist Party of which he was a part author.

The Court: I think it is entirely too remote here for you to undertake to prove the discussion of the platform committee of a convention held at some other time and some place else.

Mr. Sharts: Enter our exceptions.

Cross-examination.

By Mr. Wertz:

I understand that the state office of the Socialist Party of Ohio is located at 1291 Cook Avenue, Lakewood, Ohio.

I was not the presiding officer of the meeting on the 13th of May. I do not recollect who was the presiding officer. I was not on the platform. As to whether I handed this resolution (referring to Government's Exhibit No. 1) or a copy of this resolution to the young newspaper man, I do not remember of handing any-



311 thing to any newspaper man at that meeting. If I had handed it to him, I would remember of doing so. I have no recollection of handing it to him. I spoke for twenty minutes against the adoption of a resolution to instruct members of the party not to register. I was present at the meeting when this resolution was adopted. I do not know of any authorization that was needed to give Mr. Wagenknecht the power to send out such literature. The State Secretary has certain powers in connection with the propaganda, which he can carry as he deems well and fit. The meeting on the 13th of May was called for the purpose of nominating candidates for political office. It was an illegal meeting insofar as it took any action in regards to conscription. So far as that particular leaflet is concerned (referring to Government's Exhibit No. 2) I did not see it until today in the court room. I did not say that the only part of that circular which I ever heard of before was the part containing the resolution which was adopted on the 13th of May. I have seen the Constitution of the United States before. I have seen the speech of Daniel Webster before. It was published in one of our socialist newspapers and I read it there, so I have seen other parts of that circular. I did not see all of that circular as it stands until today.

Q. Did you ever see this circular here marked "Government's Exhibit No. 3?"

A. Yes, I have; I believe so. If you will let me examine it, I will make sure.

312 Mr. Sharts: When was that introduced?

Mr. Wertz: It was not introduced. It was identified.

Q. When did you see that before?

Mr. Sharts: I object, if Your Honor please, on the several grounds. First of all, there has been no identification of that leaflet with the activities of these men. There has been no identification of that leaflet in connection with Mr. Schue.

The Court: I think he may be asked when he saw it before. The objection is overruled.

Mr. Sharts: Enter an exception for the defendants.

I saw that circular pinned to the wall in the hall of the building where the socialist headquarters are located and took it down and put it in the wastebasket. On Sunday, May 13th, at the time of the meeting that I have been inquired of. The socialists, those in the socialist movement, had not been seriously discussing the position of refusing to register at that time. It was first brought up at the meeting. I knew at the time that this resolution was under discussion over at the socialist hall that it provided: "That we recommend to and urge all members of the party and workers generally that they refuse to register for conscription." In answer to the question as to whether I knew this part was in there: "And we pledge to them our financial and moral support in their refusal to become the victims of the ruling class." I heard it read. I do not know o



any specific reason for pledging to these men who refused to register financial support. I know a socialist called Clare. He is a  
 313 member of our organization. He is the custodian and literature agent at socialist headquarters. He is there at times and out at meetings more often. I certainly did not issue any instructions to Clare in regard to furnishing financial assistance to men arrested, who refused to register. I did not instruct him to furnish any other kind of assistance.

314 Q. Did you say in that speech on the Public Square: "We need only to look at the newspapers and their hysterical appeals to the people to register for conscription. They are trying everything under the sun. They are doing all in their power through the Billy Sunday form of revivalism to induce you to register for conscription. They are afraid." Do you recall having said that, in substance?

A. I recall having said that in relation to the attempt to raise an army by the voluntary method and the failure of it, and then went on, as I stated in my speech, to show that the government had found it impossible, because the people were opposed to war, to raise such an army and thus were trying to compel the people to fight.

The Court: Put your question over again and ask him whether he said that.

(To the witness:) You will then give a direct answer of "Yes" or "No."

(Question repeated.)

A. I recall having said that in relation to recruiting and not—

Q. No. Did you say that in substance?

A. I did not say it in relation to registration.

Q. I did not ask you that. I asked you if you said that in substance in your speech.

A. No.

Q. Then the stenographer hasn't it correctly reported in  
 315 this transcript?

A. I saw the stenographer numerous times asking for information.

Q. I did not ask that, I asked you whether or not the stenographer had a correct report of what you said.

A. If he has put those words in my mouth, the report is not correct.

Q. Is this correct?—did you say this: "They"—speaking of the government—"are afraid that the working class of this community on registration day enact their own referendum in regard to this law by refusing to register. (Loud applause)"?

A. I did not. I referred to a referendum in connection with the failure of the government to permit the people to vote on the conscription law.

Q. The stenographer then has got you correctly reported on that subject?

A. Evidently not.

Q. Did the stenographer report you correctly on this: "What is to be the position of the working class of this nation in regard to war and registration for conscription? Are we in this country, having been bludgeoned—no other word describes it—having been forced into the war against our will, against our wishes and in violation of the mandate on which the President and Congress was elected—are we to meekly submit and lie down and permit the ruling class to do its evil, base, dirty work?"?

A. I did not make that statement as appears there.

Q. Did you make that statement in substance?

313 A. You are asking me to say that the stenographer has got it correct now.

Q. Did you make it in substance?

A. I did not use the word "registration" in that statement, nor the word "dirty," which I never would use in that connection.

Q. It is correct except that you did not use the word "registration"?

A. I did not say anything about registration.

Q. Did you make this statement in your speech: "And, further, we of the Socialist Party have taken a certain definite position in regard to conscription?"

A. I very likely did, referring to the National organization's position.

Q. "We have taken the position, this position, that the 13th Amendment to the Constitution of the United States forbids involuntary servitude, forbids the Congress of this country to enact any laws which are intended to force submission of the people to voluntary servitude. And we take the position that when Congress enacts a law which is a violation of the fundamental law of the nation and the ruling class enforces that law through the courts which it controls, when the only way that the people can show that they do not intend to have their freedom and their rights trampled under foot is by refusing to submit to that law." Did you make that statement in your speech in substance?

A. The statement as it appears without the statement which followed would do me an injustice.

317 The Court: The question is did you make that statement.

The Witness: I qualified the statement by stating the way the people should act with reference to that law.

Q. Did you make that statement?

A. With a qualification.

Q. Then the stenographer has you correctly reported: "The only way that the people can show that they do not intend to have their freedom and their rights trampled under foot is by refusing to submit to that law."—That much of it is correct?

A. I went on to say that the way to refuse to submit is to organize the strength of the people to wipe the law from the statute book, as I stated in my speech.

Q. Is this the qualification which you made to that statement: "And so the Socialist Party by the city of Cleveland by resolution has gone on record as urging and recommending to every worker

who is inspired by a belief in humanity, to every worker who believes that wholesale murder is just as wrong as the murder of an individual—as urging and recommending to every worker who does not desire to take a gun and shoot down his fellow beings, no matter whether they are being called Germans or Austrians or Russians or English—whatever their nationality may be—we have said to those workers by official action of the Socialist Party that we urge and recommend that they refuse to be registered for conscription?”

A. I did not say that in reference to registration. I said it  
318 in reference to conscription.

Q. “To refuse to be registered for conscription.”?

A. To refuse to be conscripted.

Q. Explain to the court and jury how you can conscript these men for the army until they are registered?

A. I will gladly explain, for the purpose of the court and jury, that I further stated, that rather than be conscripted, rather than be compelled to fight in this war, I would be stood against a wall and riddled with bullets. I might register and still not submit when I was conscripted. That was my position.

Q. Will you explain to the jury how in your mind it was possible to conscript the socialists or the young men of this country without first registering them under this law?

Mr. Sharts: I object.

The Court: I think that is a legitimate —.

Mr. Sharts: If Your Honor please, the point is this: He is asking him to explain how they could conscript them without registering. He has not urged their conscription.

The Court: I will overrule your objection, and on this ground: The witness has undertaken, every time that the word “registration” has appeared in any of the transcript of what he said upon that occasion, to say that he did not use the word “registration,” but it was “conscription,” undertaking to draw in his mind some distinction between opposing registration for conscription and opposing conscription. Now, as bearing upon his intent, and what he  
319 meant by his acts and words, I consider the District Attorney’s question competent.

Mr. Sharts: Enter the exception of the defendants.

A. I would gladly state, in reply to the question, that this difference existed in my mind: A man might submit to registration, he might voluntarily go and register his name as a man between the ages, go through that formality, and later, if he happened to be one of the victims who was selected to go and shoot his fellow human beings, he might well, as tens of thousands of men in England have done, refuse to be conscripted and to murder his fellow human beings. That is my position.

Q. I did not ask you for your position. I ask you how they could conscript these men without registration? By what process in your mind would it be possible to do that?

A. I think it would be entirely possible. I do not believe it is

my business here today to tell the government how it might have done this thing differently.

Q. How did you understand that these men could be conscripted without being registered first?

A. You will remember that I did not say to them that they should refuse to register but said that they should refuse to be conscripted, which carried with it the fact that they might well submit to registration, but later they might claim exemption, they might raise all of the objection, and if they were still selected to fight in the army and they had these conscientious objections, which I stated I had, they could then refuse to do this work for the government.

320 Q. That is all you ever had in mind?

A. That is my position.

The Court: And did not your statement also carry with it that they might refuse to register?

The Witness: Not necessarily.

Mr. Sharts: I object. I wish to enter the exception of the defendants to the inquiry by the court.

Q. Did you follow that statement that I asked you about last with: "I say to you here this afternoon, as I said at the first meeting which I addressed on the Public Square after war was declared—at the first meeting, at a time when the ages in the conscription law had not been fixed—I said to you then, when I personally was in danger or conscription, that if I came between the ages provided for in that law that I would refuse to register for conscription." Did you say that?

A. I stated in my speech what I did say, which was that I would refuse to be conscripted.

Q. Did you say that?

A. I did not say that.

Q. Did you continue immediately after that: "My friends, I am ready to say more: That if this law is amended, if later, after the workers who are to be drafted have been sent to the trenches of Europe and have been mowed down by the Million against the socialists on the battle fields of Europe, if, after the first million or two of the flower of the humanity of this country has become  
321 the victims of the ruling class in their insensate greed and desire to make profits, if they have become pulsating masses of human flesh, and then Congress amends this law to draft men of greater ages into the army, and those ages include mine, then I shall refuse to become the victim of the ruling class and be conscripted?"

A. I certainly did not state what appears there.

Q. The stenographer manufactured that out of his own mind?

A. I can show you one positive statement that he did manufacture in that sentence.

Q. Is the substance of that correct?

A. It is not.

Q. Did you continue with this statement: "Further, that if the time comes that I am asked to go into the army, if my name were registered by force and the government drafted me, believing, as I

do, in humanity and being opposed to killing my fellow human beings—opposed to the wholesale murder which is going on in Europe, then I say that the ruling class and government of this nation will find that they will have to stand me against a stone wall before they can bring me into the army to fight their battles”?

A. I did not make the statement as appears there. I made it as I stated it in my speech, which is quite different.

Q. Do you recall using the words: “If my name were registered by force”?

A. I certainly did not use that expression.

Q. Is what you have testified here, in answer to a question  
322 by Mr. Sharts, in which you reproduced your speech—is that all you said over there at the Public Square on that subject?

A. It is what I recollect saying on the Public Square, and it is very vivid in my mind.

Q. Now, continuing after what I read to you before, do you remember that you made this statement: “I think I have made our position in regard to conscription, and in regard to the war, as clear as it can be made.” Do you recall that?

A. I surely did, our position in regard to the war and in regard to conscription.

Q. And did you continue: “I tell you as frankly and as openly as I possibly can that we socialists do not intend to do this work of murder”?

A. That grows out of my statement that I would refuse to be conscripted.

Q. “I would be saying little to you if I left you with only this message, if I only told you that we socialists did not intend to register for conscription.” Did you say that?

A. I did not.

Q. And did you continue: “If I only told you that we socialists did not intend to register for conscription, if I told you only we socialists are opposed to the war, then my message would not be complete”?

A. I did not say what you have just quoted.

Q. Then the stenographer who took that down made a mistake in what you said?

A. I am quite aware that he made many errors in taking it down, from the way he took it.

323 Mr. Sharts: Was this circular offered in evidence? (Referring to exhibit marked “Government’s Exhibit No. 3.”)

The Court: No. It has not been offered and has not been identified in any such way as, in the opinion of the court, would make it competent if it were offered.

Redirect examination.

By Mr. Sharts:

Q. The circular that Mr. Wertz showed you you stated you saw pinned on the wall of the socialist headquarters and you took it down and put it in the wastebasket?

A. I did.

Q. What was your purpose in doing that?

A. I was not in sympathy with what appeared on that circular.

Mr. Sharts: Now, if Your Honor please, I would like to have that introduced.

The Court: Do you object to its being introduced?

Mr. Wertz: No.

The Court: It may be introduced.

(The said exhibit, marked "Government's Exhibit No. 3" was also marked "Defendant's Exhibit No. 2" and is hereto attached and made part hereof.)

(The said exhibit was thereupon read in evidence to the jury by counsel for the defendant-.)

Q. This is the circular that you are not in sympathy with?

A. I took it down and put it in the wastebasket.

Q. State why you are not in sympathy with the statement in that circular?

A. Because it urges young men not to register.

324 Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf W. J. BAUKNET who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is W. J. Bauknet. I am in the banking business. I am assistant treasurer of the Pearl Street Savings & Trust Company, of Cleveland, Ohio. I am acquainted with Mr. Wagenknecht, one of the defendants in this case. I have known him from three to four years. My acquaintance has been through advertising, probably two or three times a week. I have met him frequently during those three or four years.

Q. I wish you would state to the jury your opinion as to Mr. Wagenknecht's character?

A. Mr. Wagenknecht's character is good. I don't know of any bad habits he has. He has never expressed himself in any other way only through business, and I have had business dealings through advertising business—a little association that he was secretary of—for the last three years.

Cross-examination.

By Mr. Wertz:

My association with Mr. Wagenknecht has come in a business way, through advertising. He was secretary of a small paper that was published in our location, the south end. I gave him advertising for the paper he represented. It was not his paper. The paper is called the "Bulletin," an advertising medium. It is not a socialist paper. The

325 purpose of the advertising is general business advertising of the merchants along West 25th Street. He used to call for the copy for the ad I gave him for that paper. He would call about once a week on copy, and talk over advertising from time to time on things that we used to have, like picnics and carnivals along the street. That was the only way I knew him. These transactions took place about once a week. From those meetings I formed my judgment as to his character. I have met him outside of meeting there.

326 Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf HARRY DECKER, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Harry Decker. I am now in the manufacturing line. I am now and have been a resident of Cleveland for 53 years. I am acquainted with Mr. Wagenknecht, one of the defendants. I have known him, I should judge, about four years. He was during that time in my employ and I saw him practically every day. I have formed an opinion regarding his character.

Q. Now, state to the jury what that opinion is as to his character?

A. I would not know anything, gentlemen, to reflect on his character. I must say that I never had a man in my employ who was more loyal and more agreeable and seemed to be more conscientious than he was. He took care of his work, performed his duties that were assigned to him, till the time that I quit business. Had I remained in business, he would still have been with me, I suppose.

Cross-examination.

By Mr. Wertz:

I was in the dry-goods business on the West Side.

327 Thereupon the defendants, further to maintain the issues on their part, called as a witness in their behalf MAYO FESLER, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is Mayo Fesler. I am secretary of the Civic League. I am acquainted with Mr. Ruthenberg. I think the first time I met Mr. Ruthenberg was about 1912, during the arrangements for the Constitutional Convention of Ohio. Mr. Ruthenberg at that time was a candidate for the Convention on the Socialist ticket. Since that time I have not met him frequently. I have met him at numerous times, that is, in times of political campaigns. I have not *have* a very broad opportunity of forming an opinion. My organization

passes judgment upon candidates for public office. And this particular time that I have mentioned, the socialists had candidates for the Constitutional Convention. We did not pass judgment upon the candidates at that time. We simply made a statement as to their training, and so on, which the candidates themselves gave us. After that date, whenever Mr. Ruthenberg was a candidate—I think he was two or three times after that—the socialist party as a party declined to furnish my organization with any information, so that, all that we did in connection with those candidates was to make a statement of their age, training, occupation, and so on, with no opinion on their qualifications for a particular office, or no opinion as to their character. Now then, my knowledge of Mr. Ruthenberg, my acquaintance with him, has been only as I have  
 328 come in contact with him at those times, and then for two years, when I was secretary of the City Club, when he was on the platform before the City Club, I think on two or three occasions to address us from the socialist point of view.

Q. Have you formed an opinion of his character from those opportunities to converse with him and meet him?

A. Yes, I think I have.

Q. I wish you would state to the jury what your opinion is as to his character.

A. I should like to preface it with this statement: that my acquaintance with him would not warrant me in passing judgment on him or in taking up with my executive board an expression of judgment as to his qualifications for office, but my acquaintance with him has led me to feel that Mr. Ruthenberg is an honest, sincere gentleman, but misguided in his political and social beliefs.

329 Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf A. DE BEAUCLAIRE, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is A. De Beaulaire. I am manager for a New York Publishing house. My office address is 416 American Trust Building. My residence is 7217 Melrose Avenue, Cleveland. I have lived in the city of Cleveland 25 years. I am acquainted with Mr. Ruthenberg, one of the defendants in this case. I have known Mr. Ruthenberg constantly 18 or 20 years as an employee. During the time he was in my employ I saw him every day. I feel that I had ample opportunity to form a correct opinion of his character.

Q. I wish you would state to the jury what, in your opinion, his character is?

A. Absolutely truthful and reliable gentleman.

Cross-examination.

By Mr. Wertz:

Mr. Ruthenberg was in my employ from 1897 to 1907. He has not been in my employ since 1907.



Redirect examination.

By Mr. Sharts:

Since he left my employ I have had opportunities to meet him occasionally.

Q. What opportunities for forming an opinion as to his character since then have you had in the way of meeting with him?

A. None particularly since he left my employ. I have only met him occasionally, as we meet people we know on the streets, and chatted with him, and he has not been in my employ, but, so far as my knowledge of him goes, I have learned nothing to the contrary of my previous knowledge of him.

Thereupon the defendants, further to maintain the issues upon their part, called as a witness in their behalf WILLIAM B. FISH, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sharts:

My name is William B. Fish. My occupation is manufacturer of cloaks, in connection with the Printz-Biederman Company of Cleveland. I have resided continuously in Cleveland for about 25 years. I am acquainted with Mr. Ruthenberg, one of the defendants in this case. I have known him as an employe of ours approximately three years. While he was with us my opportunities for contact with him were frequent, daily. During that time I have had an opportunity to form an opinion as to his character. I should consider that he had a reputable character. He is what I would call a good man.

Cross-examination.

By Mr. Wertz:

We let Mr. Ruthenberg go about a month or more ago, possibly six or eight weeks ago. The reason we let him go is because we felt that the views he held upon matters pertaining to subjects that are particularly subject to test during the war crisis were not such that we could afford to harbor him under our roof. The views that I had in mind when I said that we could not harbor him under our roof were views that called in question the authority of this Government to do the things that it is trying to do now. I cannot say that he had pronounced views upon that subject except in a general way. I understood those to be his views.

(Thereupon the defendants rested.)

Thereupon the Government, further to maintain the issues on its part, called as a witness in its behalf, in rebuttal GEORGE WILKINSON, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wertz:

My name is George Wilkinson. I am postmaster in East Palestine, Ohio. The package marked "Government's Exhibit No. 27" arrived at East Palestine, I think, on the 22nd of May, in the morning.

Cross-examination.

By Mr. Sharts:

The pencil writing on Government's Exhibit No. 27 is not my writing. One of the clerks in the postoffice at East Palestine, Ohio wrote that. (Referring to pencil writing reading: "Received torn at East Palestine postoffice.") The paper was torn a little bit when that arrived. I think I saw this bundle (Referring to Government's Exhibit No. 27). It was a bundle like that which arrived at East Palestine postoffice and was sent from there to the District Attorney at Columbus, Ohio. I don't know who sent that package, but, if it is the package they have reference to, it was sent from Cleveland, Ohio. I did not see him send it.

Mr. Wertz: If we have not already done so, I want to introduce in evidence all of these Government exhibits Nos. 1, 2, 3, 4 and No. 27.

Mr. Sharts: What is No. 27?

Mr. Wertz: The package circulars.

333 Mr. Sharts: I want to enter an objection to the introduction of the package, Government's Exhibit No. 27. I think it is entirely irrelevant in this case.

The Court: The question of the competency of Government's Exhibit No. 27 depends upon the identification of that as something circulated by Mr. Wagenknecht.

Mr. Wertz: Mr. Wagenknecht, himself, as I recall it, said that he sent out hundreds of packages just like this one and sent some to this particular man Hennacy, too.

The Court: It will be admitted.

Mr. Sharts: Enter the exception of the defendants.

The Court: This completes the testimony in this case.

Thereupon both parties rested.

The above and foregoing, together with the exhibits hereto attached and made a part hereof, being Government's Exhibits 1, 2, 3, and 4, and Defendants' Exhibits Nos. 1 and 2 is all the evidence offered and received on the trial of the above entitled case.

Adjournment to July 21, 1917; 9:00 a. m.

334

July 21, 1917—9:00 a. m.

The Court: Gentlemen of the Jury, on yesterday afternoon I permitted two items of evidence to be introduced to you without at

the time instructing you as to the extent to which it is to be received and considered by you, which I deem it my duty to charge you with respect to. One is what is known as the Government's Exhibit No. 4, a copy of a letter dated May 25, 1917, purporting to have been written by the defendant Wagenknecht and the other is Government's Exhibit No. 27, a package purporting to have been sent through the mails. I am instructing you that those two items of evidence are to be received and weighed by you only as against the defendant Wagenknecht, and not as against the other two defendants here, and are to be received and weighed against him only for the purpose of enabling you to pass upon the intent with which his acts were done and speeches made on the 27th day of May, 1917.

Mr. Wertz: If the Court please, would not the jury also be entitled to consider this evidence by showing the probabilities if they found that these had been mailed after the 15th of May, or the letter written after the 18th of May, 1917—

The Court: I will not say anything further than I have said on that subject.

Mr. Sharts: If the Court please, there are four brief charges  
335 that we request the Court to give to the jury before argument.

The Court: I will receive your request, and, to the extent that I think they are sound law, I will give them in my general charge to the jury, but I will not give any of them before argument. That is not the practice of this Court.

(Exception by defendants.)

The said requests to charge are as follows:

If you find that defendant Wagenknecht aided and abetted, induced, counseled and commanded Alphons J. Schue not to register, but that defendants Ruthenberg and Baker did not in any way assist the said Schue not to register, then you may return a verdict of "Guilty" against Wagenknecht and a verdict of "Not Guilty" against Ruthenberg and Baker.

If you find that Wagenknecht and Baker aided and abetted Schue not to register but that Ruthenberg did not in any way aid and abet the said Schue not to register, you will return a verdict of "Guilty" against Wagenknecht and Baker, and a verdict of "Not Guilty" against Ruthenberg.

Gentlemen of the Jury, I charge you that you shall take the testimony of Alphons J. Schue with the greatest caution, and I charge you that it is extremely dangerous to convict any man on the uncorroborated testimony of an accomplice.

336 You must be satisfied beyond a reasonable doubt that all the three defendants, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker did so aid, abet, counsel, command, induce and procure the said Alphons J. Schue not to register before you can return a verdict of "Guilty" against any one of them or all of them and if you feel that you cannot satisfy yourselves beyond such reasonable doubt, you will return a verdict of "Not Guilty."

You will disregard any testimony that has been given here as

tending to prove that these defendants aided Schue not to register except that testimony which tends clearly to show that this aiding and abetting, counseling, commanding, procuring and inducing was done or said in the presence and hearing of the said Alphons J. Schue and did so, in fact, induce him directly not to register, and unless you find these to be the facts, you will return a verdict of "Not Guilty."

Thereupon, after argument to the jury by counsel for the respective parties, the Court charged the jury as follows:

337 The Court: It is my intention, Mr. Sharts, to give the defendants the benefit of all the special requests that you have presented.

Gentlemen of the jury, in the important public duty which you are called upon, in connection with myself, to perform, there is, I may say, a division of labor. It is my duty only to advise you correctly as I hope to do, about the law which applies in this case. It is your duty, accepting that law, to apply it to the facts. It is also your duty to determine from the evidence introduced before you what the facts in this case are, and whether or not, upon those facts, under the law, the defendants, all of them, one of them, or two of them are guilty or not, as charged in the indictment. I have no purpose, therefore, to intimate to you in the course of my charge my individual opinion as to what the facts are nor as to the guilt or innocence of any one or all of these defendants, and, if any of you should draw an inference from anything that I have said or may say as to what my personal opinion is in that respect, I ask you to disregard it.

The three defendants here are on trial for having aided, abetted, counseled, induced and procured one Alphons J. Schue to violate a law of the United States. That is the charge against the three defendants, and, as I have said—the evidence justifying it—you may find any one or more or all of them guilty, and any one or more or all of them not guilty.

338 The law of the United States which they are alleged to have caused or procured Schue to violate is an Act passed the 18th of May, 1917, entitled: "An Act to Increase Temporarily the Military Establishment of the United States." It has been known and referred to among some persons as the Selective Service Law, among others as the Draft Law; it has been referred to by still others as the Conscription Law.

Gentlemen of the jury, I say to you that that law is a law of these United States, that it is a valid, constitutional law, and that it is binding upon all of the citizens of the United States and all other persons within, and under the jurisdiction of the laws of, the United States. You will, therefore, disregard any suggestion or intimation that has been made to you, either in the testimony or in argument, or elsewhere, of any question about the constitutionality or the validity of that law or about its binding force and the duty resting upon each and every person within the jurisdiction of the United States to obey it.

That law, among other things, provides, that it shall be the duty of all male persons, between the ages of twenty-one and thirty, both inclusive, to register themselves in accordance with the proclamation of the President of the United States. The Proclamation was issued fixing the 5th of June as the time, and the voting booths of each precinct as the place, for all persons subject to its provisions to comply therewith. It thereupon became and was the duty of Alhpons

J. Schue to register, and his failure to register in accordance  
339 with its provisions, he being a male citizen within the prescribed ages, constitutes an offense, a violation of that law.

Now, the charge against the defendants here, as I have stated, is that they aided, abetted, counseled, commanded and induced him to violate that law, and that they have thereby made themselves, if you find from the evidence beyond a reasonable doubt that they did so, guilty as principals in the same degree of the same offense that Mr. Schue was guilty of.

The elements, therefore, of the crime which is charged against these defendants, and which it will be necessary for you to find from the evidence that they are guilty of beyond a reasonable doubt, are:

First. The failure of Alhpons J. Schue to register in accordance with the provisions of that law, and the further fact that he was a person subject to the provisions of that law and required to register.

Second. Did the defendants here, any one or more of them or all of them, aid, abet, counsel, command and induce him so to unlawfully and wilfully refuse to register, and thereby cause and procure him to commit that crime?

Third. Did Mr. Schue wilfully fail and refuse to register as a result and consequence of the counsel, commands, influence, or advice received by him from these defendants or either of them?

These are the elements of the crime and the fundamental  
340 facts you must find from this evidence beyond a reasonable doubt are present here in this case before the defendants or any one of them can be found guilty.

Now, gentlemen of the jury, it is necessary that you find from the evidence beyond a reasonable doubt all of these things, but I am going to charge you more particularly as to the last two elements of the crime. It is necessary, as I say, that you should find beyond a reasonable doubt that these defendants, some one or more of them, or all that you shall find guilty, if you find anybody guilty, did wilfully advise, aid, counsel, abet or induce Schue to commit that crime. It is not necessary that this aiding, this abetting, this counseling, this inducing, should have been in any particular manner. It is not necessary that you should find that these defendants or any of them knew that he was present there listening to what is alleged here against them. It is, however, necessary that you should find beyond a reasonable doubt that what was said by these defendants and each of them was said with the intent, wilfully and knowingly, to cause persons within the hearing of their voices to wilfully fail to register and comply with the provisions of this law.

In that connection, and as bearing upon that part of it, I wish to announce some other principles of law to you. It is said that every

person under the jurisdiction of the laws of the United States is entitled to freedom of opinion, and that is true, and, being entitled to freedom — opinion, he is entitled to freedom in expressing  
 341 opinions, and that is true. It is his privilege, and it is proper for every person within the jurisdiction of our laws, within certain limits, to oppose the adoption of laws. It is the privilege and right of everyone to urge the repeal of laws. It is the privilege and right of every one to express his opinion with respect to the wisdom or unwisdom of laws that have been passed, and to criticize and comment upon the conduct of public officials. All of that is true.

There is, however, this limit in the law upon those rights and privileges. No one has the right, under the guise or pretext of exercising the existence of a law or the wisdom of a law, or of advocating or urging its repeal, to urge, induce, or incite anybody to violate a valid existing law of the United States. Whenever he transgresses that limit and his words and acts, however they may be guided or phrased, are intended by him for the purpose, and will have a necessary and direct result, of causing or inducing somebody to violate such a law, then he is guilty also with the person who has acted upon the aiding, abetting, advice and counsel that have been so given to him. It is not permitted to anyone under the guise of freedom of political opinion or freedom of speech, or freedom in the enjoyment of his religious convictions, to violate, or intentionally cause others to violate, the laws of the land.

342 A Mormon cannot, under the guise of its being his religious belief, live in polygamy within the limits of the United States. One who does not believe in the institution of the Sabbath, or Sunday, and who a majority of the people in the United States believe in it, and who religiously disbelieves in it, is not thereby exempted from obedience to the Sunday observance laws, and is not exempted from responsibility if he incites, advises, causes, or procures others to violate them.

So, in this case, gentlemen of the jury, the right and freedom of opinion on the part of these defendants, any of them or all of them, as to their political or other beliefs as to the validity of this law or its constitutionality, or as to its wisdom or unwisdom, their right to urge its repeal and to express their opinion with respect to it—does not protect them, under the law, if you should find from the evidence beyond a reasonable doubt what they, all of them or any of them, wilfully and intentionally urged, counseled, advised or procured Schue to violate that law.

Now, gentlemen of the jury, as I have said, it is not necessary that that aiding, abetting, commanding, counseling and inducing should be given in any particular way. It is only necessary that you should find from the evidence beyond a reasonable doubt that such was the wilful intent of these defendants or either of them, if the evidence here shows that they were guilty of the conduct alleged against them.

You must, of course, find that.

343 While you must find the three elements of this crime beyond reasonable doubt, it is not necessary that you should find that they used the words when they gave the advice, that "y

shall not" or "you must not" or "you ought not" to register. It is sufficient if you find that it was their wilful intent to produce that result in the minds of their hearers; and that the language used by them, as a whole, was calculated to produce and to cause necessarily that result in the mind of anyone that listened to it who was within the age limit, and, therefore, called upon to observe the law.

Now, I have said in this connection, gentlemen of the jury, that I am intending only to state to you the law. That is my part of this trial, and your part is to find the facts. I have said, however, that you must find each and all of these elements of the crime, including the further element that Schue was thereby caused and induced to commit the violation of law, beyond a reasonable doubt and that is the law. The humanity of our law is such that every person put upon trial charged with the commission of a crime is presumed to be innocent until he is proven guilty by the evidence produced before you beyond a reasonable doubt. I do not know that I can make clearer to you what is meant by the expression "reasonable doubt." Learned judges have said that efforts to make the expression clearer

than the words "reasonable doubt" make it are likely to be  
 344 misleading and confusing. I shall, therefore, not charge you further on that, than to repeat that the evidence must show each and all of the defendants guilty beyond a reasonable doubt of the crime alleged against them, and must show that as to all of the elements of the crime, before you can render a verdict against them.

As part of your duty it will be necessary for you to consider the credibility of the witnesses who have testified here before you. You are to weigh the testimony and to judge of the credibility of the witnesses. It is for you to determine, and not for me to determine, the weight and credibility of the witnesses. It has been said, and I say to you, that in passing upon the credibility of witnesses you are entitled to take into consideration their manner of testifying, their interest in this cause or the result of this cause, their apparent bias and prejudice, if any, or their freedom from bias and prejudice, if any, the inherent probability or improbability of the statements made by the different witnesses, and from all of these and such other considerations and facts as are present in the case, applying thereto your fund of common sense and human experience, say from this testimony what the truth is.

In that connection, however, I deem it incumbent upon me to say this further to you. Alphons Schue is indicted as an accomplice, as a participes criminis or a party to the crime alleged here against the defendants, and it is a rule of law for the weighing of the testimony of accomplices that it is to be looked upon with great  
 345 suspicion, and that ordinarily it is the duty of the Court—and I am now performing that duty—to advise you that it is unsafe to convict upon the uncorroborated testimony of an accomplice. It is also the law, gentlemen of the jury, that it is within your province to render a verdict of guilty upon the uncorroborated testimony of the accomplice, if you find therefrom that the defendant is guilty beyond a reasonable doubt. I say this also to you,

that it is not necessary to the application of that rule that the corroboration should be as to all or the entire testimony of the accomplice. It is sufficient to satisfy the rule to which I have adverted and as to which I have just advised you if he be corroborated by other testimony in any one or more of the material elements or particulars of this evidence relating to some one or more of the material elements of the crime. It is not necessary, in other words, that his entire story and testimony should be corroborated.

So I say to you, gentlemen of the jury, that it is for you to weigh the testimony. The credibility of these witnesses is for you. You are to bear in mind my caution as to the testimony of an accomplice. You will bear in mind what I have said as to your right even though that testimony is not corroborated. You will bear in mind what I have said if you find it to be corroborated. It is for you to say whether or not you find from this evidence beyond a  
346 reasonable doubt that any one or more or all of these defendants are guilty or not guilty.

You understand that I am not undertaking to tell you what you shall find, but if the evidence, under the instructions I have given you, warrants it, you may find all of the defendants guilty or not guilty, or you may find the defendant Wagenknecht guilty and the other two defendants not guilty. You may find also Baker and Wagenknecht guilty and you may find the defendant Ruthenberg not guilty, just as you may find all of them guilty, and you may change or reverse the order and find as to the guilt or innocence of any one or more of them as you feel justified under the evidence in doing.

I have stated to you that the crime charged against the defendants is that they aided, abetted, commanded, counseled and induced Schue to violate the law. It is necessary that you should find this beyond a reasonable doubt, from what the evidence shows to have taken place in the presence of Schue and from what these persons so communicated to Schue, that he was thereby caused and procured to commit this crime. Evidence of what these defendants did, any one or all of them did, outside of the presence of Schue and not communicated by them to Schue, is not to be weighed by you in determining whether or not the defendants, any one or more of them, is guilty of a crime. The evidence that I have permitted to go to you on that subject, as I have already charged you, is limited  
347 to the respect stated at the time it was introduced, and for the purpose of, in one or two instances, affecting the credibility of the testimony.

Now, gentlemen of the jury, you will be furnished with two different forms of verdict which are so phrased with blanks therein that it will be possible to return your verdict or verdicts in the form in which I have indicated, that is, finding all guilty or not guilty, one or more guilty or not guilty, and so forth. When you retire to your room, you will select your foreman and when you have agreed upon your verdict you will advise the bailiff; and you will be brought into court and your verdict will be received by me.



The Court: Is there anything that either counsel wish to request the Court to give in charge which I have not done?

Mr. Sharts: No, if your Honor please.

Mr. Kavanagh: I have a request to make on reasonable doubt. I have the form that is adopted by this Court and has been followed by the Supreme Court, and I request it at this time.

The Court: If counsel for the defendants joins in that further request I will give it. If counsel for defendants does not, I will not amplify the charge on that subject.

Mr. Sharts: We are quite satisfied to have it read.

348 The Court: Counsel for the defendants joins in the request that I define to you further reasonable doubt. What is a reasonable doubt? A verdict of guilty can never be returned without convincing evidence. The law is too humane to demand a conviction while a rational doubt remains in the mind of a juror. You will be justified, and are required, to consider a reasonable doubt as existing if material facts, without which guilt cannot be established, may be fairly reconciled with innocence. In human affairs absolutely certainty is not always attainable. From the nature of things reasonable certainty is all that can be attained on many subjects. When a full and candid consideration of the evidence produces a conviction of guilt, and satisfies the mind to a reasonable certainty, a mere captious, ingenious or artificial doubt is of no avail. You will look then to all the evidence, and if that satisfies you of the defendants' guilt, you will say so. If you are not wholly satisfied and find only that there are strong probabilities of guilt, your only safe course is to acquit.

Mr. Sharts, it has been the rule in this court that the exceptions to the charge have to be taken before the jury retires.

Mr. Sharts: We have no exceptions to enter.

349 Thereupon the jury retired and in due time returned into court with its verdict, which said verdict was a verdict finding the defendants guilty as charged in the indictment, as appears of record herein.

Thereafter, and within three days from the rendering of said verdict the defendants duly filed their written motion for a new trial, as appears of record herein, and also duly filed their written motion in arrest of judgment, as appears of record herein.

Thereafter, this matter coming on to be heard, upon the said motion for a new trial and affidavits filed in support thereof, the court, upon consideration thereof, overruled the same; to which action of the court the defendants thereupon duly excepted.

Thereupon the matter coming on to be heard upon the motion in arrest of judgment filed by the defendants herein, the court, upon consideration thereof, overruled the same; to which action of the court the defendants thereupon duly excepted.

Thereupon the court pronounced sentence and entered judgment against the defendants herein; to which action of the court the defendants thereupon duly excepted.

Now come the defendants and presents to the court this, their bill

of exceptions in narrative form, and, upon consideration thereof, the court finds that the foregoing bill of exceptions, together with the exhibits hereto attached and made part hereof, is a true, correct and complete bill of exceptions, and the same is hereby allowed and signed this 21 day of August, 1917.

D. C. WESTENHAVER,

*District Judge.*

350

GOVERNMENT'S EXHIBIT No. 1.

Resolved, by the Socialist Party in joint meeting assembled, that we denounce the law proposing "involuntary servitude," in violation of the 13th amendment of the Constitution of the United States, in the form of conscription to murder our fellow human beings in other lands, and recommend to and urge all members of the party, and the workers generally, that they refuse to register for conscription and pledge to them our financial and moral support in their refusal to become the victims of the ruling class.

Filed Jul. 21, 1917, at — o'clock — M. B. C. Miller, Clerk, U. S. District Court, N. D. O.  
Gov. Ex. 1. F. H. R.

(Here follow fac-simile leaflets marked pages 351 and 352.)

# Down With Conscription

The 13th Amendment to the Constitution of the United States reads:

"Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any places subject to their jurisdiction."

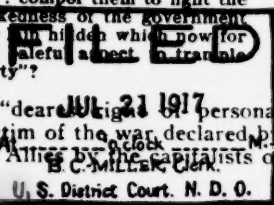
## CONSCRIPTION IS THE WORST FORM OF INVOLUNTARY SERVITUDE.

The conscription law which the Wilson administration intends to put into effect proposes that the young men of this nation shall be taken from their homes against their will, and sent to the trenches of France to murder and be murdered in a war over the commercial interests of the capitalist class.

Daniel Webster, one of the greatest American statesman, said this of conscription in the Congress of this country, Dec. 9, 1814:

"Is this consistent with the character of a free government? Is this civil liberty? Is this the real character of our constitution? No sir, it is not. The constitution is libeled, foully libeled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their treasures and their own blood a Magna Charta to be slaves. Where is it written in the constitution, in what article or section is it contained, that you may take children from their parents . . . . compel them to fight the battles of any war in which the follies or the wickedness of the government may engage? Under what concealment has this power . . . . which now for the first time comes forth, with a tremendous and painful aspect, to trample down and destroy the dearest right of personal liberty?"

Every man who is determined to uphold the "dear old right of personal liberty," every man who refuses to become a victim of the war, declared by the government to protect the millions loaned to the Allies by the capitalists of this country, should



## REFUSE TO REGISTER FOR CONSCRIPTION

The Socialist party of Cleveland has shown the way in the fight against conscription by adoption of this resolution:

Resolved, by the Socialist Party in joint meeting assembled, that we denounce the law proposing "involuntary servitude," in violation of the 13th amendment of the Constitution of the United States, in the form of conscription to murder our fellow human beings in other lands, and recommend to and urge all members of the party, and the workers generally, that they refuse to register for conscription and pledge to them our financial and moral support in their refusal to become the victims of the ruling class.

One of the millions of leaflets issued by the Socialist Party  
SOCIALIST PARTY OF OHIO—1291 Cook Ave., Lakewood, O.

*Govt Ex 2 7702*

V  
I  
F  
At...  
U.

# YOUNG MEN

are you going to

## REFUSE TO REGISTER

for military service in a foreign country

## WHILE THE RICH MEN

who have brought on this war

FILED  
JUL 21 1917  
At 10 o'clock  
B. C. MILLER, Clerk  
U. S. District Court, N. D. O.

## STAY AT HOME

and get richer by gambling in food stuffs ?

We would rather die, or be imprisoned, for the sake of justice, than kill our fellow men in this unjust war.

SIGNED,

*Young Men's Anti-Militarist League*

*Govt Ex 2*  
*7 10 17*

Government's Exhibit No. 2.

352

At

U.

# PROCLAMATION and WAR PROGRAM

The Socialist Party of the United States in the present grave crisis, solemnly reaffirms its allegiance to the principle of internationalism and working class solidarity the world over, and proclaims its unalterable opposition to the war just declared by the government of the United States.

Modern wars as a rule have been caused by the commercial and financial rivalry and intrigues of the capitalist interests in the different countries. Whether they have been frankly waged as wars of aggression or have been hypocritically represented as wars of "defense", they have always been made by the classes and fought by the masses. Wars bring wealth and power to the ruling classes, and suffering, death and demoralization to the workers.

They breed a sinister spirit of passion, unreason, race hatred and false patriotism. They obscure the struggles of the workers for life, liberty and social justice. They tend to sever the vital bonds of solidarity between them and their brothers in other countries, to destroy their organizations and to curtail their civic and political rights and liberties.

The Socialist Party of the United States is unalterably opposed to the system of exploitation and class rule which is upheld and strengthened by military power and sham national patriotism. We, therefore, call upon the workers of all countries to refuse support to their governments in their wars. The wars of the contending national groups of capitalists are not the

concern of the workers. The only struggle which would justify the workers in taking up arms is the great struggle of the working class of the world to free itself from economic exploitation and political oppression, and we particularly warn the workers against the threat and delusion of defensive warfare. As against the false doctrine of national patriotism we uphold the ideal of international working-class solidarity. In support of capitalism, we will not willingly give a single life or a single dollar; in support of the struggle of the workers for freedom we pledge our all.

The mad orgy of death and destruction which is now convulsing unfortunate Europe was caused by the conflict of capitalist interests in the European countries.

In each of these countries, the workers were oppressed and exploited. They produced enormous wealth but the bulk of it was withheld from them by the owners of the industries. The workers were thus deprived of the means to purchase the wealth which they themselves had created.

The capitalist class of each country was forced to look for foreign markets to dispose of the accumulated "surplus" wealth. The huge profits made by the capitalists could no longer be profitably reinvested in their own countries, hence, they were driven to look for foreign fields of investment. The geographical boundaries of each modern capitalist country thus became too narrow for the industrial and commercial operations of its capitalist class.

READ NOTICE ON LAST PAGE.

JUL 21 1917

6 o'clock  
C. MILLER, Clerk.  
District Court

*Deputy Clerk*

The efforts of the capitalists of all leading nations were therefore centered upon the domination of the world markets. Imperialism became the dominant note in the politics of Europe. The acquisition of colonial possessions and the extension of spheres of commercial and political influence became the object of diplomatic intrigues and the cause of constant clashes between nations.

The acute competition between the capitalist powers of the earth, their jealousies and distrusts of one another and the fear of the rising power of the working class forced each of them to arm to the teeth. This led to the mad rivalry of armament, which, years before the outbreak of the present war, had turned the leading countries of Europe into armed camps with standing armies of many millions, drilled and equipped for war in times of "peace."

Capitalism, imperialism and militarism had thus laid the foundation of an inevitable general conflict in Europe. The ghastly war in Europe was not caused by an accidental event, nor by the policy or institutions of any single nation. It was the logical outcome of the competitive capitalist system.

The six million men of all countries and races who have been ruthlessly slain in the first thirty months of this war, the millions of others who have been crippled and maimed, the vast treasures of wealth that have been destroyed, the untold misery and sufferings of Europe, have not been sacrifices exacted in a struggle for principles or ideals, but wanton offerings upon the altar of private profit.

The forces of capitalism which have led to the war in Europe are even more hideously transparent in the war recently provoked by the ruling class of this country.

When Belgium was invaded, the government enjoined upon the peo-

ple of this country the duty of remaining neutral, thus clearly demonstrating that the "dictates of humanity", and the fate of small nations and of democratic institutions were matters that did not concern it. But when our enormous war traffic was seriously threatened, our government calls upon us to rally to the "defense of democracy and civilization."

Our entrance into the European war was instigated by the predatory capitalists in the United States who boast of the enormous profit of seven billion dollars from the manufacture and sale of munitions and war supplies and from the exportation of American food stuffs and other necessities. They are also deeply interested in the continuance of war and the success of the allied arms through their huge loans to the governments of the allied powers and through other commercial ties. It is the same interests which strive for imperialistic domination of the Western Hemisphere.

The war of the United States against Germany cannot be justified even on the plea that it is a war in defense of American rights or American "honor." Ruthless as the unrestricted submarine war policy of the German government was and is, it is not an invasion of the rights of the American people as such, but only an interference with the opportunity of certain groups of American capitalists to coin cold profits out of the blood and sufferings of our fellow men in the warring countries of Europe.

It is not a war against the militarist regime of the Central Powers. Militarism can never be abolished by militarism.

It is not a war to advance the cause of democracy in Europe. Democracy can never be imposed upon any country by a foreign power by force of arms.

It is cant and hypocrisy to say



that the war is not directed against the German people, but against the Imperial Government of Germany. If we send an armed force to the battlefields of Europe, its cannon will mow down the masses of the German people and not the Imperial German Government.

Our entrance into the European conflict at this time will serve only to multiply the horrors of the war, to increase the toll of death and destruction and to prolong the fiendish slaughter. It will bring death, suffering and destitution to the people of the United States and particularly to the working class. It will give the powers of reaction in this country the pretext for an attempt to throttle our rights and to crush our democratic institutions, and to fasten upon this country a permanent militarism.

The working class of the United States has no quarrel with the working class of Germany or of any other country. The people of the United States have no quarrel with the people of Germany or any other country. The American people did not want and do not want this war. They have not been consulted about the war and have had no part in declaring war. They have been plunged into this war by the trickery and treachery of the ruling class of the country through its representatives in the National Administration and National Congress, its demagogic agitators, its subsidized press, and other servile instruments of public expression.

We brand the declaration of war by our government as a crime against the people of the United States and against the nations of the world.

In all modern history there has been no war more unjustifiable than the war in which we are about to engage.

No greater dishonor has ever been forced upon a people than that

which the capitalist class is forcing upon this nation against its will.

In harmony with these principles, the Socialist Party emphatically rejects the proposal that in time of war the workers should suspend their struggle for better conditions. On the contrary, the acute situation created by war calls for an even more vigorous prosecution of the class struggle, and we recommend to the workers and pledge ourselves to the following course of action:

1. Continuous, active, and public opposition to the war, through demonstrations, mass petitions, and all other means within our power.

2. Unyielding opposition to all proposed legislation for military or industrial conscription. Should such conscription be forced upon the people, we pledge ourselves to continuous efforts for the repeal of such laws and to the support of all mass movements in opposition to conscription. We pledge ourselves to oppose with all our strength any attempt to raise money for payment of war expense by taxing the necessities of life or issuing bonds which will put the burden upon future generations. We demand that the capitalist class, which is responsible for the war, pay its cost. Let those who kindled the fire furnish the fuel.

3. Vigorous resistance to all reactionary measures, such as censorship of press and mails, restriction of the rights of free speech, assemblage, and organization, or compulsory arbitration and limitation of the right to strike.

4. Consistent propaganda against military training and militaristic teaching in the public schools.

5. Extension of the campaign of education among the workers to organize them into strong, class-conscious, and closely unified politi-

cal and industrial organizations, to enable them by concerted and harmonious mass action to shorten this war and to establish lasting peace.

6. Widespread, educational propaganda to enlighten the masses as to the true relation between capitalism and war, and to rouse and organize them for action, not only against present war evils, but for the prevention of future wars and for the destruction of the causes of war.

7. To protect the masses of the American people from the pressing danger of starvation which the war in Europe has brought upon them, and which the entry of the United States has already accentuated, we demand:

(a) The restriction of food exports so long as the present shortage continues, the fixing of maximum prices, and whatever measures may be necessary to prevent the food speculators from holding back the supplies now in their hands;

(b) The socialization and democratic management of the great industries concerned with the production, transportation, storage, and the marketing of food and other necessities of life;

(c) The socialization and democratic management of all land and other natural resources now held out of use for monopolistic or speculative profit.

These measures are presented as means of protecting the workers against the evil results of the present war. The danger of recurrence of war will exist as long as the capitalist system of industry remains in existence. The end of wars will come with the establishment of socialized industry and industrial democracy the world over. The Socialist Party calls upon all the workers to join it in its struggle to reach this goal, and thus bring into the world a new society in which peace, fraternity, and human brotherhood will be the dominant ideals.

# DEMONSTRATION

FOR PEACE AND AGAINST CONSCRIPTION

**Public Square**

**Sunday, May 6th, 2:30 P. M.**

**GOOD SPEAKERS.**

**Make your voice heard for peace and against Prussianizing this country.**

Subscribe to The American Socialist, issued by the National Office of the Socialist Party, 803 West Madison Street, Chicago, Ill., 50c per year; 25c for six months.

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## GOVERNMENT'S EXHIBIT No. 4.

Lakewood, Ohio,

May 25, 1917.

Postmaster, East Palestine, Ohio.

DEAR SIR: About a week ago two packages of printed matter were addressed to the East Palestine, post office in the name of A. A. Hennacy, General Delivery. Mr. Hennacy informs us that he only received one package and that it had been opened.

I write you now to request that you forward the other package in your possession to A. A. Hennacy, General Delivery, Martins Ferry, Ohio. If this is not done, and if by tracing we can find that you interfered with the delivery of this second package to the addressee, we shall immediately refer the case to our attorney and institute the proper proceedings.

Yours respectfully,

A. WAGENKNECHT.

*State Secretary.*

Sufficient postage for forwarding the package is enclosed.

Filed Jul. 21, 1917, at — o'clock — M. B. C. Miller, Clerk, U. S.  
District Court, N. D. O.

Govt.'s Ex. 4. F. H. R.

(Here follows fac-simile circular marked page 354.)

355 Government's Exhibit No. 27, being a package addressed to A. A. Hennacy, General Delivery, East Palestine, Ohio, about twelve inches in height, about twelve inches in width, and about eighteen inches in length, the contents thereof being printed dodgers or circulars headed "Down with Conscription" and at the bottom of the aforesaid printed dodgers or circulars there appearing words and phrases of the following tenor: "One of the millions of leaflets issued by the Socialist Party—Socialist Party of Ohio—1291 Cook Ave., Lakewood, Ohio," the said package and the contents thereof being wrapped with brown wrapping paper, and the circulars contained in the package as aforesaid being set forth herein in full, reads as follows:

### Down With Conscription.

The 13th Amendment to the Constitution of the United States reads:

"Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any places subject to their jurisdiction."

### Conscription is the Worst Form of Involuntary Servitude.

The conscription law which the Wilson administration intends to put into effect proposes that the young men of this nation shall be taken from their homes against their will, and sent to the trenches of France to murder and be murdered in a war over the commercial interests of the capitalist class.

Daniel Webster, one of the greatest American statesman, said this of conscription in the Congress of this country, Dec. 9, 1814:

"Is this consistent with the character of a free government? Is this civil liberty? Is this the real character of our constitution? No sir, it is not. The constitution is libeled, foully libeled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their treasures and their own blood a Magna Charta to be slaves. Where is it written in the constitution, in what article or section is it contained, that you may take children from their parents \* \* \* compel them to fight the battles of any war in which the follies or the wickedness of the government may engage? Under what concealment has this power lain hidden which now for the first time comes forth, with a tremendous and baleful aspect, to trample down and destroy the dearest right of personal liberty?"

Every man who is determined to uphold the "dearest right of personal liberty," every man who refuses to become a victim of the war declared by the government to protect the millions loaned the Allies by the capitalists of this country, should

## Refuse to Register for Conscription.

The Socialist party of Cleveland has shown the way in the fight against conscription by adoption of this resolution:

Resolved, by the Socialist Party in joint meeting assembled, that we denounce the law proposing "involuntary servitude," in violation of the 13th amendment of the Constitution of the United States, in the form of conscription to murder our fellow human beings in other lands, and recommend to and urge all members of the party, and the workers generally, that they refuse to register for conscription and pledge to them our financial and moral support in their refusal to become the victims of the ruling class.

One of the millions of leaflets issued by the Socialist Party.

## SOCIALIST PARTY OF OHIO.

1291 Cook Ave., Lakewood, O.

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*Petition for Writ of Error.*

(Filed July 25, 1917.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT and CHARLES BAKER, Defendants.

*Petition for Writ of Error.*

Now come Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, defendants herein, by Morris H. Wolf and Joseph W. Sharts, their attorneys, and say that on the 25th day of July, A. D. 1917, this Court entered judgment herein against these defendants, in which judgment and the proceedings, had, prior thereto in this cause, certain errors were committed, to the prejudice of these defendants, involving a construction of the Constitution of the United States, all of which will more fully appear in the assignment of errors which is filed with this petition.

Wherefore, these defendants pray that a writ of error may issue in this behalf out of the Supreme Court of the United States, for the correction of the errors so complained of, and that transcript

of the record, proceedings and papers in this cause, duly authenticated may be sent to the Supreme Court of the United States.

CHARLES E. RUTHENBERG,  
ALFRED WAGENKNECHT,  
CHARLES BAKER,

*Defendants.*

MORRIS H. WOLF,  
JOSEPH W. SHARTS,

*Attorneys for Defendants.*

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*Assignment of Error.*

(Filed July 25, 1917.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT and CHARLES BAKER, Defendants.

*Assignment of Error.*

Now come Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, defendants herein, and plaintiffs in error, and each for himself and jointly make and file this, their assignment of error:

1. The trial Court erred in requiring these defendants to present evidence to support their challenges to the grand and petit jury arrays without any demurrer or answer or exceptions filed thereto by the prosecution.

2. The trial Court erred in refusing to admit the testimony of R. E. Miller, Clerk of the Court, to show that he was an adherent of the Republican Party, that the other jury commissioner, George S. May, was a member of the Democratic Party, and that the Socialist Party, of which defendants were members and officers, was a minor political party within the District and was without representation on the jury board; contrary to their constitutional right to an impartial jury.

3. The Trial Court erred in refusing to admit the testimony — the Clerk of Cuyahoga County Board of Elections, offered for the purpose of showing that the names in the jury box and those drawn for jury service were exclusively the names of adherents of the Republican and Democratic Parties, and for that and other reasons hostile to and prejudiced against these defendants as members of the Socialist Party; and that there were and are numerous persons in said District qualified to serve on said

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juries, who are members of the Socialist Party, but are excluded from such service by reason of their adherence to said party; contrary to defendants' right to an impartial jury and the equal protection of the law and due process of the law, and contrary to Sec. 276 Judicial Code and the grant of equal rights under the Act of May 31st, 1870, c. 114, Sec. 16.

4. The Trial Court erred in refusing to admit said testimony offered for the purpose of showing that the names so selected and placed in said jury-box were taken exclusively, or almost exclusively, from the names of land-owners, property-owners, and capitalists, and that the names drawn and picked from said box for the grand and petit juries herein are names exclusively of land-owners, property-owners and capitalists and that defendants are all proletarians, that is to say, landless and propertyless wage workers, who as Socialists advocate the rights of proletarians as opposed to land-lords, employers and capitalists, and urge the abolition of Rent, Interest, and Profit, which are the principal sources of income of the jurors so drawn and of the others whose names were placed in said jury box; and that said jurors so drawn are and of necessity must be, by reason of their private interests hostile to and prejudiced against these defendants as Socialists and as advocates of such abolition; and that there were many thousands of persons in said District qualified to serve on said juries who do not derive their income from Rent, Interest or Profit and would therefore not be rendered hostile to and prejudiced against defendants because of private interests, but that said persons are excluded from said jury service; contrary to the constitutional rights of defendants as above set forth.

5. The Trial Court erred in refusing to sustain said challenge on the ground that the juries were selected and drawn exclusively from the Eastern Division of the Northern District of Ohio, instead of from the entire District, contrary to the Sixth Amendment of the Constitution of the United States.

6. The Trial Court erred in refusing to sustain the challenge on the ground that the jury box from which were drawn the names for said juries had not been emptied at any time within recent years nor refilled since November, 1916, many months prior to said drawings, that no evidence was obtainable of the number — qualified names in said jury box at the time of said drawings, and in fact said box did not, at the time of said drawings contain the names of 300 qualified persons as required by Judicial Code, Sec. 276; and that many of the names in said box were selected and put there by one Jeremiah J. Sullivan, a former commissioner who had not held office for more than a year prior to said drawings; and that of the persons sitting on said alleged grand jury three had been so selected and their names put in said box by said Sullivan; and of the persons drawn for said petit jury three had been so selected and their names put in said box by said Sullivan; contrary to Sec. 276 Judicial Code.

7. The Trial Court erred in refusing to sustain said challenge on the ground that the Marshal and his Deputy, who served the writs

of venire for both of said juries were not "indifferent persons" as required by Sec. 279 Judicial Code, but active adherents of the

Democratic Party and Political adversaries of the defendants,  
360 and in refusing to admit the testimony of said Marshal,  
Charles W. Lapp; that he was a member of the Democratic  
Party.

8. The Trial Court erred in refusing to sustain said challenge on the ground that said Marshal did not summon nor return the entire venire of 30 names for grand jury service as required by order of the Court and as drawn by the Clerk, but only 19 thereof; and had made no return of the venire for the petit jury drawn for service after said grand jury was drawn.

9. The Trial Court erred in refusing to sustain said challenge on the ground that the jury box used for said drawings, was small and rectangular, and incapable of being rotated so as to mingle the names and that there was in fact, no attempt to draw said names by lot, but the Clerk of the Court, in the presence of the Marshal, both of whom were political adversaries of defendants and hostile to them, selected from said box the names for these proceedings; and that said Clerk, did in fact, select from said box the names exclusively of adherents of the political parties adverse to that of defendants, said adherents being persons likely to be and in fact hostile to and prejudiced against these defendants; contrary to the defendants' constitutional right of due process of law and of trial by an impartial jury of their peers.

10. The Trial Court erred in refusing to sustain said challenge on the ground that all of said jurors, both inside and outside the City of Cleveland, were summoned by mail, and that the actual delivery of the summons in such cases was not by any official of the Court or other qualified person, but by a person unknown, to wit, a letter carrier; and that in four instances the registry card which was returned had not been signed by the person summoned

but by someone else; and that of the said grand jurors so  
361 summoned by mail seven were designated not by their

Christian names but by initial only, and the summons mailed not to any street number but simply to the Town or City, where such person was believed to reside; and that 9 of the persons summoned by mail for the petit jury, were designated in the same manner; that by reason of these neglects of all safe-guards both as to the manner of serving the summons and the identity of the persons so summoned defendants were deprived of their constitutional right of due process of law and of trial by an impartial jury of the State and District.

11. The Trial Court erred in refusing to sustain the challenge on the ground that the Clerk, without an order of the Court, directing him to select any parts of said Division, in drawing the names for said grand jury did not draw any names from 7 of the Counties of the Division but drew 6 from Cuyahoga County; and in drawing the names for said petit jury the Clerk, without an order of Court, drew 5 from Cuyahoga, 4 from Columbiana, and 3 from Ashtabula, but drew none from 8 counties, within said Division; contrary to Sec.



277 Judicial Code and the constitutional right of defendants to be tried by an impartial jury of the State and District.

12. The Trial Court erred in failing to sustain said challenge in any or all of its counts and in overruling same.

13. The Trial Court erred in refusing to sustain the defendants' "motion to quash" on the ground that one D. E. Grager was a member of said grand jury without his name having been drawn from said jury box and without any one of such names having been selected or summoned.

14. The Trial Court erred in overruling said motion to  
362 quash on the ground that said grand jury presented this indictment without defendants having been charged with the alleged offense upon oath or affirmation and without any proper testimony having been presented to said grand jury or any witnesses sworn in a particular case.

15. The Trial Court erred in overruling said motion to quash on the ground that endorsements, not provided by law, and prejudicial to defendants, were placed on the back of said indictment, to-wit, the signature of the District Attorney beneath the signature of the foreman of the grand jury.

16. The Trial Court erred in overruling said motion on the ground that the indictment failed to show that the events constituting the alleged offense occurred before the sitting of said grand jury and before the finding of said indictment.

17. The Trial Court erred in overruling said motion on the ground that the indictment fails to show that the grand jurors were of the necessary qualifications, were of the body of the State and District, and sitting within the District, or of the jurors who found the indictment.

18. The Trial Court erred in overruling said motion on the ground that said indictment fails to state that said Alphons J. Schue, was a citizen of the United States, or a male person not an alien enemy who had declared his intention to become a citizen, at the time said offense is alleged to have been committed.

19. The Trial Court erred in overruling said motion on the ground that said indictment fails to state that said proclamation had been published at the time said offense is alleged to have been committed,  
by these defendants, or was ever published.

363 20. The Trial Court erred in overruling said motion on the ground that said indictment fails to negative the possible appointments provided in Subdivision Third, of Section 1 of the Draft Act.

21. The Trial Court erred in overruling said motion on the ground that said indictment alleges three separate offenses in one count.

22. The Trial Court erred in overruling said motion on the ground that said indictment fails to set forth any act or manner in which these defendants did aid, abet, counsel, command, induce and procure said Schedule to commit the alleged offense, and fails entirely to set forth the nature and cause of the accusation and to apprise these defendants of what they will be required to meet, so as to enable them to plead former acquittal or conviction.

23. The Trial Court erred in overruling said motion on the ground that these defendants are charged therein as accessories to a misdemeanor.

24. The Trial Court erred in refusing to permit the filing of defendants' plea in abatement and refusing to hear the several grounds set forth therein, namely:

(a) That the names placed in the jury box from which these juries were drawn had been selected and put there by jury commissioners appointed on partisan consideration and *and* from only the Democratic and Republican Parties, and without any representative of the Socialist Party; that said jury commissioners were hostile to these defendants;

(b) That all the names so selected and put in the jury box were the names of adherents of the Republican and Democratic Parties exclusively and that the names of members of the Socialist Party had been excluded from said box because of their political affiliation;

364 (c) That the names so selected and put in said jury box had been taken exclusively, or almost exclusively, from the names of land-owners, property-owners, capitalists and employers, and the names drawn from said box for these juries were the names exclusively of land-owners, property-owners capitalists and employers, who by reason of their private interests were hostile to and prejudiced against these defendants;

(d) That said juries had been selected and drawn from only a part of the Northern District of Ohio, instead of the entire District;

(e) That the jury box had not been emptied at any time within recent years, nor re-filled since November, 1916, many months before said drawings, and said box did not at the time of said drawing, contain the names of 300 qualified persons; that many of the names therein had been selected and put there by one Jeremiah J. Sullivan, whose authority as jury commissioner ended long before said drawings; that three of the persons on said grand jury had been so selected by Sullivan and 3 on the petit jury.

(f) That the Clerk of the Court in the presence of the Marshal, both being political adversaries of these defendants and opposed to and prejudiced against them had selected from the box the names for jury service, and said names had been selected exclusively from adherents of the Republican and Democratic Parties who were likely to be and in fact were hostile to and prejudiced against these defendants; in violation of defendants' constitutional right of due process of law and trial by an impartial jury;

(g) That said Marshal and his Deputy, who served the writs of venire for both of said juries were not "indifferent persons," but active partisans of the Democratic Party and political adversaries of these defendants;

365 (h) That said Marshal did not summon the 30 men for grand jury service as ordered by the Court and drawn by the Clerk, but selected and summoned only 19 thereof;

(i) That all persons summoned for said grand and petit juries

were summoned by mail, including several residents of Cleveland, Ohio;

(j) That one D. E. Grager was sworn as a grand juror, no such name having been drawn from the jury box, nor any one of that name summoned;

(k) That the Clerk in drawing the grand jury, drew 6 from Cuyahoga County alone and none from seven of the counties; and in drawing the petit jury Clerk, without any order of the Court, directing such selection, drew 5 from Cuyahoga, 4 from Columbiana, and 3 from Ashtabula, but none from eight counties, in violation of Sec. 277 Judicial Code, and the constitutional right of defendants to an impartial jury of the State and District.

(l) That said grand jury presented the indictment without these defendants having been charged with the alleged offense upon oath or affirmation, and without any testimony having been presented to said grand jury of a nature proper for such grand jury to receive, or any witnesses sworn in a particular case;

(m) That said grand jurors were not of the necessary qualifications were not of the body of the State and District, nor properly constituted a grand jury.

25. The Trial Court erred in overruling a demurrer on the ground that the facts set forth therein do not constitute an offense against the laws of the United States.

366 26. The Trial Court erred in overruling said demurrer on the ground that the indictment charges these defendants with being accessories to a misdemeanor;

27. The Trial Court erred in overruling said demurrer on the ground that the indictment does not allege the events or acts as occurring prior to the finding of the indictment.

28. The Trial Court erred in overruling said demurrer on the ground that the indictment does not allege that it was presented by a grand jury, "duly impaneled and sworn," and in, of, and for the District.

29. The Trial Court erred in overruling the demurrer on the ground that the Act of May 18th, 1917, known as the Draft Act, and the Proclamation of said date, were unconstitutional on the following grounds:

(a) Said Act creates Involuntary Servitude in violation of Amendment XIII of the United States Constitution;

(b) Said Act deprives men of their liberty without due process of law in violation of Amendment V of the United States Constitution;

(c) Said Act deprives men of their right of trial by jury in violation of Amendment VI of the United States Constitution;

(d) Said Act violates Article 1 Section 8 Clause 15 of the United States Constitution;

(e) Said Act violates Article 1, Section 8, Clause 16 of the United States Constitution;

(f) Said Act in Section IV thereof, violates Article 3, Section 1 and Article 1, Section 8, Clause 9 of the United States Constitution;

(g) Said Act violates Article II, Section 2 of the United States Constitution;

(h) Said Act violates Article 10 of the amendments of the United States Constitution;

367 (i) Said Act in Section 6 thereof violates the fundamental principle of justice and liberty embodied in the Preamble of the United States Constitution.

30. The Trial Court erred in refusing to grant to these defendants separate trials, because under the circumstances it was impossible to introduce evidence as to one of the defendants without thereby prejudicing all as members of the said political organization.

31. The Trial Court erred in overruling defendants' challenge to the petit jury array, made after examination, on the ground that the defendants had been misled as to what jury would try the case, and that said panel had been drawn before the grand jury which brought in the indictment.

32. The Court erred in admitting, as against the defendants, over their objection and exception, certain testimony of the witness, Alphons J. Schue, in substance as follows:

Q. When did you first learn of the conscription law or the registration law?

A. I read about the law in the paper.

Q. Now, up to the 20th of May, 1917, what was your intention about registering or not registering under that law?

Mr. Sharts: I object. If your Honor please, the Act under which this indictment is drawn was passed on a certain date (May 18th) and anything that occurred or any intention or anything of that sort that may have been in existence prior to that time, I think, is incompetent in this case.

The Court: I am inclined to agree with you about that subject, as to certain restrictions, but the question is not open to objection on that ground.

Q. On the 20th of May, and prior thereto, what was his intent and purpose with respect to the registration provisions of that law?

368 The objection would be overruled. (Exception by defendant-.)

A. I would have certainly registered if I had not heard about these Socialist Peace Meetings.

33. The Court erred in admitting the said testimony as against defendants, Ruthenberg and Wagenknecht.

34. The Court erred in admitting testimony over the objection and exception of defendants, as against the defendants, Ruthenberg and Wagenknecht, regarding the speech of Charles Baker of May 20th, in substance as follows:

Q. Now do you recall what Baker said on the 20th of May, 1917, in substance, Mr. Schue, in that speech?

A. He said he is of military age and he would refuse to register.

Q. What else did he say that you can recall?

A. And he told about the standpoint of the Socialist Party, the

way they voted against conscription and that it was taken by the Local here that all Socialists would refuse to register.

Q. What is the last part of the answer?

A. That all Socialists would refuse to register and induce others, telling them that they would have the full support of the Socialist Party.

Q. Do you recall anything else that Baker said on that date? If you do not recall anything else, in order to refresh your memory, I will ask you if you recall if he said anything about himself registering personally?

Mr. Sharts: I object to putting a suggestion like that in the question.

The Court: I understood you to say, Mr. Schue, that what you have testified to was in substance what you remember as to Mr. Baker's speech on the 20th of May at the Public Square. Is that correct?

369 The Witness: Yes, sir.

The Court: You may put the question, Mr. Wertz. (Exception by defendant-.)

The Witness: He said he would refuse to register, he being of military age.

Q. Do you know whether or not, he did, in fact register?

Mr. Sharts: I object.

The Court: The objection to that will be sustained.

Q. In order to refresh your memory, I will ask whether you remember Baker saying anything about him being shot before he would register?

Mr. Sharts: I object to leading the witness to an answer like that.

The Court: You may indicate to him, Mr. District Attorney, anything in addition to what has already been said what Mr. Baker said on the subject with reference to being shot before registering. (Exception by defendant-.)

A. He said he would rather be shot here as a man than shot in the trenches of Europe as a dog.

35. The Court erred in admitting evidence of the speeches of Wagenknecht and Ruthenberg on May 27th as against Baker, and in overruling the motion for a new trial based on that point.

36. The Court erred in refusing the request of defendants, that the testimony of James L. Lind, as follows, be stricken out:

Question by Mr. Sharts: This statement that you refer to, was it at the police station?

A. Yes, in the Police Inspector's office.

Q. Was Mr. Schue present?

A. I don't think so. I don't know Mr. Schue.

379 Mr. Sharts: If your Honor please, I am going to ask to have the testimony of this witness, with regard to any admis-

sions made by Mr. Wagenknecht, at the police station, stricken out, as not having been made in the presence of Mr. Schue.

The Court: I will overrule your request and you may have your exception but I will make this statement in addition to that.

Mr. Sharts: We will take an exception.

The Court: The jury will not regard any testimony made by this witness as to what transpired at the police station except as it was and was intended to be a repetition of that which had taken place or transpired on the Public Square. Any part of the testimony that is of a different character than that will be disregarded by you.

37. The Court erred in admitting the introduction of evidence by Willur D. Bacon, and permitting the introduction of a leaflet purporting to have been approved at a meeting attended by the said Willur D. Bacon, on May 13th, 1917, and at which meeting defendants, Ruthenberg and Wagenknecht were present, on the ground that the said leaflet was alleged to have been approved by some of defendants on May 13th or five days prior to the passage of the Act.

38. The Trial Court erred in refusing to permit these defendants to rebut evidence of intent by producing evidence that they had constantly advised registration when inquired of.

39. The Trial Court erred in refusing to direct a verdict for the defendants or any one of them or two of them at the close of the plaintiff's testimony, there having been *so* corroborative evidence offered to support the statements of defendant Schue, who was an alleged accomplice.

371 40. The Trial Court erred in not directing a verdict for the defendants at the close of all the testimony, for the same reason.

41. The Trial Court erred in overruling the motion of the defendants for a new trial for the reasons therein given, and particularly on the ground of newly discovered evidence tending to show that Schue perjured himself on the witness stand in saying that he had had no connection with the Socialist organization other than to attend the meetings of May 20th and May 27th.

42. The Trial Court erred in overruling the motion in arrest of judgment for the reasons therein given, wherefore the defendants, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, each for himself and jointly pray that the judgment and sentence herein may be reversed and held for naught.

CHARLES E. RUTHENBERG,  
ALFRED WAGENKNECHT,  
CHARLES BAKER,  
MORRIS H. WOLF,  
JOSEPH W. SHARTS,

*Attorneys for Defendants.*

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*Amended Assignment of Error.*

(Filed July 31, 1917.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES BAKER, Defendant.

*Amended Assignment of Error.*

Now come Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, defendants herein, and plaintiffs in error, and each for himself and jointly make and file this, their assignment of error:

1. The Trial Court erred in requiring these defendants to present evidence to support their challenges to the grand and petit jury arrays without any demurrer or answer or exceptions filed thereto by the prosecution.

2. The Trial Court erred in refusing to admit the testimony of B. C. Miller, Clerk of the Court, to show that he was an adherent of the Republican Party, that the other jury commissioner, George S. May, was a member of the Democratic Party, and that the Socialist Party, of which defendants were members and officers, was a minor political party within the District and was without representation on the jury board; contrary to their constitutional right to an impartial jury.

3. The Trial Court erred in refusing to admit the testimony — the Clerk of Cuyahoga County Board of Elections, offered for the purpose of showing that the names in the jury box and those drawn for jury service were exclusively the names of adherents of the Republican and Democratic Parties, and for that and other reasons, hostile to and prejudiced against these defendants as members of the Socialist Party; and that there were and are numerous persons

373 in said District qualified to serve on said juries, who are members of the Socialist Party, but are excluded from such service by reason of their adherence to said party; contrary to defendants' right to an impartial jury and the equal protection of the law and due process of the law, and contrary to Sec. 276 Judicial Code and the grant of equal rights under the Act of May 31st, 1870, C. 114, Sec. 16.

4. The Trial Court erred in refusing to admit said testimony offered for the purpose of showing that the names so selected and placed in said jury-box were taken exclusively, or almost exclusively, from the names of land-owners, property-owners, and capitalists, and that the

names drawn and picked from said box for the grand and petit juries herein are names exclusively of land-owners, property-owners and capitalists and that defendants are all proletarians, that is to say, landless and propertyless wage workers, who as Socialists advocate the rights of proletarians as opposed to landlords, employers and capitalists, and urge the abolition of Rent, Interest, and Profit, which are the principal sources of income of the jurors so drawn and of the others whose names were placed in said jury box; and that said jurors so drawn are and of necessity must be, by reason of their private interests hostile to and prejudiced against these defendants as Socialists and as advocates of such abolition; and that there were many thousands of persons in said District qualified to serve on said juries who do not derive their income from Rent, Interest or Profit and would therefore not be rendered hostile to and prejudiced against defendants because of private interests, but that said persons are excluded from said jury service; contrary to the constitutional rights of defendants as above set forth.

374 5. The Trial Court erred in refusing to sustain said challenge on the ground that the juries were selected and drawn exclusively from the Eastern Division of the Northern District of Ohio, instead of from the entire District, contrary to the Sixth Amendment of the Constitution of the United States.

6. The Trial Court erred in refusing to sustain the challenge on the ground that the jury-box from which were drawn the names for said juries had not been emptied at any time within recent years nor refilled since November, 1913, many months prior to said drawings, that no evidence was obtainable of the number of qualified names in said jury-box at the time of said drawings, and in fact said box did not, at the time of said drawings, contain the names of 300 qualified persons as required by Judicial Code, Sec. 276; and that many of the names in said box were selected and put there by one Jeremiah J. Sullivan, a former commissioner who had not held office for more than a year prior to said drawings; and that of the persons sitting on said alleged grand jury three had been so selected and their names put *in* said box by said Sullivan; and of the persons drawn for said petit jury three had been so selected and their names put *in* said box by said Sullivan; contrary to Sec. 276 Judicial Code.

7. The Trial Court erred in refusing to sustain said challenge on the ground that the Marshal and his Deputy, who served the writs of venire for both of said juries were not "indifferent persons" as required by Sec. 279 Judicial Code, but active adherents of the Democratic Party and political adversaries of the defendants, and in refusing to admit the testimony of said Marshal, Charles W. Lapp, that he was a member of the Democratic Party.

375 8. The Trial Court erred in refusing to sustain said challenge on the ground that said Marshal did not summon nor return the entire venire of 30 names for grand jury service as required by order of the Court and as drawn by the Clerk, but only 19 thereof; and has made no return of the venire for the petit jury drawn for service after said grand jury was drawn.

9. The Trial Court erred in refusing to sustain said challenge on



the ground that the jury box used for said drawings, was small and rectangular, and incapable of being rotated so as to mingle the names and that there was in fact, no attempt to draw said names by lot, but the Clerk of the Court, in the presence of the Marshal, both of whom were political adversaries of defendants and hostile to them, selected from said box the names for these proceedings; and that said Clerk, did in fact, select from said box the names exclusively of adherents of the political parties adverse to that of defendants, said adherents being persons likely to be and in fact hostile to and prejudiced against these defendants; contrary to the defendants' constitutional right of due process of law and of trial by an impartial jury of their peers.

10. The Trial Court erred in refusing to sustain said challenge on the ground that all of said jurors, both inside and outside the City of Cleveland, were summoned by mail, and that the actual delivery of the summons in such cases was not by any official of the Court or other qualified person, but by a person unknown, to wit, a letter carrier; and that in four instances the registry card which was returned had not been signed by the person summoned but by some one else; and that of the said grand jurors so summoned by mail seven were designated not by their Christian names but by initial

376 only, and the summons mailed not to any street number but simply to the Town or City, where such person was believed to reside; and that 9 of the persons summoned by mail for the petit jury, were designated in the same manner; that by reason of these neglects of all safe-guards both as to the manner of serving the summons and the identity of the persons so summoned defendants were deprived of their constitutional right of due process of law and of trial by an impartial jury of the State and District.

11. The Trial Court erred in refusing to sustain the challenge on the ground that the Clerk, without an order of the Court, directing him to select any parts of said Division, in drawing the names for said grand jury, did not draw any names from 7 of the Counties of the Division but drew 6 from Cuyahoga County; and in drawing the names for said petit jury, the Clerk, without an order of Court, drew 5 from Cuyahoga, 4 from Columbiana, and 3 from Ashtabula, but drew none from 8 counties, within said Division; contrary to Sec. 277 Judicial Code and the constitutional right of defendants to be tried by an impartial jury of the State and District.

12. The Trial Court erred in failing to sustain said challenge in any or all of its counts and in overruling same.

13. The Trial Court erred in not requiring the prosecution to file, either an answer or a demurrer to defendant's challenge to the array, as is evident from the following testimony:

(By Mr. Sharts:)

Q. If your Honor please, there has been nothing filed in the District Attorney's office, either in the way of a demurrer or an exception, or an answer and for that reason, we have been unable to state that an issue has been made up.

The Court: No issues are required. No answer is required.  
377 No exception is required. They may object to the sufficiency of the affidavit if they wish to submit it that way instead of to present such evidence as they may see fit to present.

Mr. Sharts: If your Honor will permit me, I will take an exception. Enter an exception to the ruling of the Court.

The Court: An exception to what?

Mr. Sharts: An exception to the ruling of the Court that neither an answer or exceptions or a demurrer are required before testimony.

The Court: As I understand you, Mr. Sharts, as the matter now stands, you have no evidence to offer except the affidavit.

Mr. Sharts: If your Honor please, if we had understood that there was to be testimony introduced, that is, that the Court was ready to hear evidence, we would have had our subpoenas issued now. We would have subpoenaed the Clerk of the Board of Elections, to produce his books and we had also intended to produce evidence from the outside towns in this District regarding the list of names of the jurors that have been selected for jury service and we are prepared to show that the statements in our challenge are true, but, as there has been no answer filed, we were not, of course, looking for a presentation of evidence this afternoon. We supposed it would be on demurrer to the challenge.

The Court: No pleadings to a challenge to an array or panel are required. They stand in the same way as a challenge to a jurymen who is being paroled and its trial by the Court without any formality.

14. The Trial Court erred in not sustaining the challenge of defendants on the ground that one of the jury commissioners was a resident of the Western Division and another jury commissioner had not been in office for some time prior to the impanelling  
378 of this jury, and that therefore there were not sufficient names in the jury box at the time the names for the last jury were drawn, as is evident from the following testimony:

(By Mr. Sharts:)

Q. Mr. Clerk, state your name.

A. B. C. Miller.

Q. Your occupation?

A. Clerk of the United States District Court for the Northern District of Ohio.

Q. How long have you occupied that position?

A. Since December, 1909, of the District Court since January, 1912.

Q. Who have been the jury commissioners in conjunction with you, during your term of office?

A. Jeremiah J. Sullivan, of Cleveland, and George S. May, of Napoleon, Henry County, Ohio.

Q. When did Jeremiah J. Sullivan cease to be a jury commissioner?

A. Approximately a year ago. I can give you the exact date from my papers.

Q. I wish you would.

A. On August 4th, 1916, the resignation of J. J. Sullivan as jury commissioner for the Northern District of Ohio, was accepted and George S. May, Esquire, of Napoleon, Ohio, was appointed as jury commissioner in his stead.

Q. Do you know where Jeremiah J. Sullivan now resides?

A. I understand in Cleveland, Ohio.

Q. Still in Cleveland?

A. Yes, sir.

Q. And does George S. May, jury commissioner, reside in the Eastern Division of this Court?

A. No, he resides in the Western Division.

379 15. The Court erred in sustaining the objection of the District Attorney to a question by defendants, as is evident from the following testimony:

Q. What were the political principles of Mr. Sullivan?

Mr. Wertz: I object.

The Court: I think that I will sustain the objection to that question, but permit you to put the inquiry in the language of the statute. As to whether or not he was a member of the dominant political party, opposed that of the Clerk, I think that is the extent of the legitimate inquiry. I do not believe it is permissible to prove whether he was a prohibitionist, or Republican or Democrat or any other political party, that it was opposed to that of the Clerk's.

Mr. Sharts: Enter an exception to the ruling of the Court.

16. The Court erred in refusing the Clerk, B. C. Miller, to state the names of the principal political parties in the District; to state Miller's own political affiliation and to state what were the political affiliations of Mr. May, as is evident from the following testimony:

(By Mr. Sharts:)

Q. Can you give the names of the principal political parties in the District?

Mr. Wertz: I object.

The Court: The objection will be sustained.

Mr. Sharts: Exception.

Q. What is your political affiliation?

Mr. Wertz: I object.

The Court: The objection will be sustained.

Mr. Sharts: Enter an exception.

Q. State whether or not Mr. Sullivan was a well-known member of a political party opposed to your own?

A. He was.

Q. Can you state how well-known?

The Court: Do you think that that is susceptible of an answer, Mr. Sharts?

Mr. Sharts: I would suppose we were entitled to some concrete information on the subject.

The Court: No, I will of my own motion, sustain an objection to that.

Exception by defendant.

Q. Will you state Mr. Miller, what were the political affiliations of Mr. May?

Mr. Wertz: I object.

The Court: The objection will be sustained unless you make your question in the form I indicated a moment ago.

Mr. Sharts: Exception.

Q. State whether or not Mr. May was — the principal political party in the District opposed to that to which you yourself belong.

Mr. Wertz: I object. Did you say the principal or a principal?

The Court: I think that is drawn most too fine a sight. The question may be answered in that form.

A. He is.

Q. State whether or not he was a member of the same political party with Mr. Sullivan.

Mr. Wertz: I object.

The Court: The objection will be sustained.

Mr. Sharts: Enter an exception for the reason that we expect to show that both Mr. Sullivan and Mr. May were members of the Democratic Party and that Mr. Miller is a member of the Republican Party, and that the Socialist Party is without representation on the jury board. This is the ground of exceptions in the previous questions.

381 17. The Trial Court erred in refusing defendants to show that the names of the grand and petit jurors were chosen from the names of partisans of the Republican and Democratic Parties, as is evident from the following testimony:—

(By Mr. Sharts:)

Q. State, Mr. Miller, how you arrived at your selection of names, what sources of information you used.

Mr. Wertz: I object.

The Court: I do not think that is a material line of inquiry, Mr. Sharts.

Mr. Sharts: Enter an exception because we expect to show by this witness that he has made use of the files of the Board of Elections and has drawn therefrom names of partisans of the Republican and Democratic Parties and excluded the names of adherents of the Socialist Party.

The Court: In view of that tender of proof, I will reverse the ruling and permit the question to be answered.

(Question read.)

A. I obtained the names by writing to the Common Pleas Judges of this Division for various Counties, and asking them to send me a list of men in their counties qualified to serve as jurors.

Q. Were the Common Pleas Judges to whom you sent this request, members of any political party?

Mr. Wertz: I object.

A. I should say—

The Court: I sustain the objection to that question.

Mr. Sharts: Enter an exception, because we expect to show that the Common Pleas Judges to whom this witness applied for names, were all of them members of the Republican and Democratic Parties, and not of the Socialist Party.

382 18. The Court erred in refusing to permit B. C. Miller, to answer in what manner the list of names sent in by Common Pleas Judges, as testified to by him, were selected, as is evident from the following testimony:—

Q. Do you know in what manner the list of names that were sent to you from the Common Pleas Judges as you have described, have been selected?

A. Not in detail. Most of the Judges—

Mr. Wertz: I object to that question; it would be hearsay.

The Court: I sustain the objection to that question.

Mr. Sharts: Enter an exception.

19. The Court erred in refusing the Clerk to answer a question that would show the proportions of names put in the jury box by Jeremiah J. Sullivan as is evident from the following testimony:—

Q. I will ask you to go through the card index, if you can, and give us a rough estimate of the proportion of names that are now in the jury box that were placed there by Mr. Sullivan?

A. I can do so.

The Court: I will sustain an objection to that part of it. I think when I have permitted you to establish that there were names there, I have given you the benefit of all that you are entitled to.

Mr. Sharts: Just enter an exception, on the ground that we expect to show by the proportion of names that a considerable number of names in the jury box now and at the time of the drawing and the Order of the Court were names placed there by Mr. Sullivan, and that such names are disqualified and that the remaining names did not constitute the required three hundred.

383 20. The Trial Court erred in refusing to permit an answer by B. C. Miller, Clerk, that would tend to establish the polit-

ical affiliation of the Marshal of the Court, as is evident from the following testimony:—

(By Mr. Sharts:)

Q. Now, Mr. Miller, who is the Marshal of the Court?

A. Charles W. Lapp.

Q. And of what political affiliation?

The Court: I will sustain an objection to that.

Mr. Sharts: Enter an exception on the ground that by the sixth challenge we have charged that the Marshal and his Deputy, who served the writs of venire for both of said juries, were not "indifferent persons," but active adherents of the Democratic Party and political adversaries of the defendants, said Marshal being an active member of the Democratic Club of Cleveland, and president of the City Council, and we expect to show by this line of questions that he was a political adversary of these defendants, at the time he served the writs of venire.

21. The Trial Court erred in refusing to sustain the defendants' motion to quash on the ground that one D. E. Grager was a member of said grand jury without his name having been drawn from said jury box and without any one of such name- having been selected or summoned.

22. The Trial Court erred in overruling said motion to quash on the ground that the said grand jury pre-ented this indictment without defendants having been charged with the alleged offense upon oath or affirmation and without any proper testimony having been presented to said grand jury or any witnesses sworn in a particular case.

384 23. The Trial Court erred in overruling said motion to quash on the ground that endorsements, not provided by law, and prejudicial to defendants, were placed on the back of said indictment, to-wit, the signature of the District Attorney beneath the signature of the foreman of the grand jury.

24. The Trial Court erred in overruling said motion on the ground that the indictment failed to show that the events constituting the alleged offense occurred before the sitting of said grand jury and before the finding of said indictment.

25. The Trial Court erred in overruling said motion on the ground that the indictment fails to show that the grand jurors were of the necessary qualifications, were of the body and the State and District, and sitting within the District, or of the jurors who found the indictment.

26. The Trial Court erred in overruling said motion on the ground that said indictment fails to state that said Alphons J. Schue was a citizen of the United States, or a male person not an alien enemy who had declared his intention to become a citizen, at the time said offense is alleged to have been committed.

27. The Trial Court erred in overruling said motion on the ground that said indictment fails to state that said proclamation

had been published at the time said offense is alleged to have been committed, by these defendants, or was ever published.

28. The Trial Court erred in overruling said motion on the ground that said indictment fails to negative the possible appointments provided in Subdivision Third, of Section 1 of the Draft Act.

29. The Trial Court erred in overruling said motion on 385 the ground that said indictment alleges three separate offenses in one count.

30. The Trial Court erred in overruling said motion on the ground that said indictment fails to set forth any act or manner in which these defendants did aid, abet, counsel, command, induce and procure said Schue to commit the alleged offense, and fails entirely to set forth the nature and cause of the accusation and to apprise these defendants of what they will be required to meet, so as to enable them to plead former acquittal or conviction.

31. The Trial Court erred in overruling said motion on the ground that these defendants are charged therein as accessories to a misdemeanor.

32. The Trial Court erred in refusing to permit the filing of defendants' plea in abatement and refusing to hear the several grounds set forth therein, as is evident from the following testimony:—

The Court: Upon examining this plea in abatement, I perceive that it raises no questions which were not raised by the challenge to the array which was tried by the Court, and, on evidence presented, held not to be sufficient. If I am wrong, that is giving you one ground of error.

Mr. Kavanagh: Mr. Sharts says except as to the 15th ground.

The Court: I would not permit under any circumstances to be offered in support of the 15th allegation, nor proof to the contrary. There would be no way of disproving that except by violating the secrecy of the grand jury room. I was going to say that, if I am wrong, I have given you one ground of error, for which you announced you were looking.

386 Mr. Sharts: In what form are you refusing it?

The Court: I am going to refuse it on the objection to its filing. I am not going to permit it to be filed, and thereby give you the benefit of an additional proposed ground of error.

Mr. Kavanagh: If your Honor please, will you state for the benefit of the record, that there were two objections made by the Government: first, as to the right to file it after having filed the other pleadings, and second—

The Court: I would sustain it upon three grounds, if you wish. First, because it is tendered for the first time at too late a day. Second, because it is tendered after the Court had heard and tried a challenge to the array, both of the grand and petit juries, and this involves, so far as it is sufficient at all, the same grounds. Third, I sustain it on the ground that it is not sufficient in law as a plea in abatement. You may have your exceptions.

Mr. Sharts: Enter the exceptions for the defendants to the ruling of the Court.

33. The Trial Court erred in refusing to hear the several grounds set forth therein, viz.:

(a) That the names placed in the jury box from which these juries were drawn had been selected and put there by jury commissioners appointed on partisan consideration and from only the Democratic and Republican Parties, and without any representative of the Socialist Party; that said jury commissioners were hostile to these defendants;

(b) That all the names so selected and put in the jury box were the names of adherents of the Republican and Democratic Parties exclusively and that the names of members of the Socialist Party had been excluded from said box because of their political affiliation;

387 (c) That the names so selected and put in said jury box had been taken exclusively, or almost exclusively, from the names of land-owners, a property owners, capitalists and employers, and the names drawn from said box for these juries were the names exclusively of land-owners, property-owners, capitalists and employers, who by reason of their private interests were hostile to and prejudiced against these defendants;

(d) That said juries had been selected and drawn from only a part of the Northern District of Ohio, instead of the entire District;

(e) That the jury box had not been emptied at any time within recent years nor re-filled since November, 1916, many months before said drawings, and said box did not at the time of said drawing, contain the names of 300 qualified persons; that many of the names therein had been selected and put there by one Jeremiah J. Sullivan, whose authority as jury commissioner ended long before said drawings; that three of the persons on said grand jury had been so selected by Sullivan and 3 on the petit jury.

(f) That the Clerk of the Court, in the presence of the Marshal, both being political adversaries of these defendants and opposed to and prejudiced against them had selected from the box the names for jury service, and said names had been selected exclusively from adherents of the Republican and Democratic Parties who were likely to be and in fact were hostile to and prejudiced against these defendants; in violation of defendants' constitutional right of due process of law and trial by an impartial jury;

388 (g) That said Marshal and his Deputy, who served the writs of venire for both of said juries were not "indifferent persons," but active partisans of the Democratic Party and political adversaries of these defendants;

(h) That said Marshal did not summon the 30 men for grand jury service as ordered by the Court and drawn by the Clerk, but selected and summoned only nineteen (19) thereof;

(i) That all persons summoned for said grand and petit juries were summoned by mail, including several residents of Cleveland, Ohio;

(j) That one D. E. Grager was sworn as a grand juror, no such



name having been drawn from the jury box, nor any one of that name summoned;

(k) That the Clerk in drawing the said grand jury, drew six from Cuyahoga County alone and none from seven of the Counties; and in drawing the petit jury, said Clerk, without any order of the Court, directing such selection, drew five from Cuyahoga, four from Columbiana, and three from Ashtabula, but none from eight Counties, in violation of Sec. 277 Judicial Code, and the constitutional right of defendants to an impartial jury of the State and District.

(l) That said grand jury presented the indictment without these defendants having been charged with the alleged offense upon oath or affirmation, and without any testimony having been presented to said grand jury of a nature proper for such grand jury to receive, or any witnesses sworn in a particular case;

(m) That said grand jurors were not of the necessary qualifications were not of the body of the State and District, nor properly constituted a grand jury.

34. The Trial Court erred in overruling a demurrer on the ground that the facts set forth therein do not constitute an offense against the laws of the United States.

35. The Trial Court erred in overruling said demurrer on the ground that the indictment charges these defendants with being accessories to a misdemeanor;

36. The Trial Court erred in overruling said demurrer on the ground that the indictment does not allege the events or acts as occurring prior to the finding of the indictment.

37. The Trial Court erred in overruling said demurrer on the ground that the indictment does not allege that it was presented by a grand jury, "duly impaneled and sworn," and in, of and for the District.

38. The Trial Court erred in overruling the demurrer on the ground that the Act of May 18th, 1917, *nor after* the Draft Act, and the Proclamation of said date, *their* unconstitutionality on the following grounds:

(a) Said Act creates Involuntary Servitude in violation of Amendment XIII of the United States Constitution;

(b) Said Act deprives men of their liberty without due process of law in violation of Amendment V of the United States Constitution;

(c) Said Act deprives men of their right of trial by jury in violation of Amendment VI of the United States Constitution;

(d) Said Act violates Article I Section 8 Clause 15 of the United States Constitution;

(e) Said Act violates Article I, Section 8, Clause 16 of the United States Constitution;

(f) Said Act in Section IV thereof, violates Article 3, Section 1 and Article 1, Section 8, Clause 9, of the United States Constitution.

(g) Said Act violates Article II, Section 2 of the United States Constitution;

390 (h) Said Act violates Article 10 of the amendments of the United States Constitution;

(i) Said Act in Section 6 thereof violates the fundamental principle of justice and liberty embodied in the Preamble of the United States Constitution.

39. The Trial Court erred in refusing to grant to these defendants separate trials, because under the circumstances it was impossible to introduce evidence as to one of the defendants without thereby prejudicing all as members of said political organization, which refusal of the Court, is evident from the following testimony:

The Court: The motion for separate trials will be denied and you may have your exceptions.

Mr. Sharts: Enter the exception of the defendants.

40. The Trial Court erred in refusing a challenge for cause by defendants of a juror, Charles P. Smith, as is evident from the following testimony:

Mr. Sharts: Then let me put my question in this form: suppose it should develop that these men have made a very ardent and vehement attack upon the law, criticising the law and criticising the President and the Government in their public meetings, but have advised their hearers to register in spite of the evil features of the law, as they see it, but it should develop that a young man listening to them has been induced thereby to refuse to register, would that affect your view as to the probable guilt or innocence, that circumstance, that they were urging their protest against the Draft Act?

Mr. Breitenstein: I object to the form of the question.

The Court: I will let him answer that question.

A. I think it would influence me against them.

Mr. Sharts: I would like to challenge the juror for cause, if Your Honor please.

391 The Court: I will get a little further information. Mr. Smith, have you formed in your own mind any opinion as to the guilt or innocence of the parties defendant in this case.

The Juror: No, sir.

The Court: Have you any personal familiarity, by hearsay or otherwise, with the alleged offense charged against them and the circumstances under which it was committed?

The Juror: Not much of one. I read some in the paper at the time this took place, something of that.

The Court: Do you remember now distinctly the circumstances and details which you read?

The Juror: No, sir.

The Court: Are you conscious of any bias or prejudice against these defendants or either of them which would influence or control your judgment and opinion as to their guilt or innocence according to the evidence as it may be produced before you and the law as it may be given to you by the Court?

The Juror; No, sir.

The Court: I repeat to you again: Can you, in your opinion, serve upon this jury and render a verdict of guilty or not guilty according to the evidence as it may be presented and the law as I shall give it to you?

The Juror: Yes, sir.

The Court: I will overrule your challenge for cause.

Mr. Sharts: Enter our exception.

41. The Trial Court erred in refusing the members of the jury to answer the following questions as is evident from the following testimony:

Mr. Sharts: Is there any man here that does not know the distinction between the Socialists and the Anarchists?

392 Mr. Wertz: I object.

The Court: That is not a proper question.

Mr. Sharts: Is there any man here that does not know there is a very wide distinction between Socialists and Anarchists?

Mr. Wertz: I object to that.

The Court: I will sustain the objection to that question. I am not going into a discussion of that question.

Mr. Sharts: Enter the exception of the defendants to the ruling of the Court.

42. The Trial Court erred in overruling defendants' challenge to the petit jury array, made after examination, on the ground that the defendants had been misled as to what jury would try the case, and that said panel had been drawn before the grand jury which brought in the indictment, as is evident from the following testimony:

Mr. Sharts: At this point, If Your Honor please, I have not had the opportunity to look the point up and I do not know whether it has any merit at all, but I would like to interpose a challenge to the entire array before proceeding further, on the ground that we were certainly misled, not intentionally, by the drawing of the petit jury by the order of the Court, following the drawing of the grand jury, in that we assumed that the petit jury which would try the case, was the petit jury drawn following the drawing of the grand jury, and we spend considerable time and money looking up the antecedents of the men to sit on the petit jury, and we are now confronted with a petit jury who are strangers to us entirely. It places us at some disadvantage and while I doubt if we have a legal right to object to that method of placing a petit jury before us, I would like to interpose a challenge on that ground.

393 The Court: The drawing was made of additional jurors for this term and the order was made in that form, and, inasmuch as the Court has allowed you wide latitude to inquire as to the qualification or disqualification of the jurymen tendered and there is not disclosed a shadow of objection as to any of the jurymen offered you, I shall overrule the challenge.

Mr. Sharts: Enter the exception of the defendants.

43. The Court erred in allowing an improper announcement prejudicial to defendants, in the Clerk's administering the oath to the jury as appears from the following testimony:

The Court: The Clerk will swear the jury.

The Clerk: You and each of you do solemnly swear that you will well and truly try the issue joined in this case wherein the United States of America by indictment prosecutes Alphons J. Schue, Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker for violation of the Act of May 18th, 1917, and a just and true verdict render therein accordingly to the testimony and the law—

The Court: Just a moment. I did not understand that Mr. Schue was on trial in this case.

Mr. Wertz: He plead guilty.

The Court: Then is that a proper form of oath?

The Court: All right.

The Clerk: —and a just and true verdict render there'n according to the testimony and the law as it shall be given you by the Court, so help you God.

Mr. Sharts: I would like to interpose an exception to the form in which the announcement was made and the form of the oath. I mean the announcement regarding Mr. Schue, in the presence of the jury.

Mr. Wertz: We can produce the record.

The Court: You may have your exception.

394 44. The Trial Court erred in admitting, as against the defendants, over their objection and exception, certain testimony of the witness, Alphons J. Schue, in substance as follows:

Q. When did you first learn of the conscription law or the registration law?

A. I read about the law in the paper.

Q. Now, up to the 20th of May, 1917, what was your intention about registering or not registering under that law?

Mr. Sharts: I object. If your Honor please, the Act under which this indictment is drawn was passed on a certain date (May 18th) and anything that occurred or any intention or anything of that sort that may have been in existence prior to that time, I think, is incompetent in this case.

The Court: I am inclined to agree with you about that subject to certain restrictions, but the question is not open to objection on that ground.

Q. On the 20th of May, and prior thereto, what was his intent and purpose with respect to the registration provisions of that law?

The objection would be overruled. Exception by defendant.

A. I would have certainly registered, if I had not heard about these Socialist Peace Meetings.

45. The Trial Court erred in admitting the said testimony as against defendants, Ruthenberg and Wagenknecht.

46. The Trial Court erred in admitting testimony over the objection and exception of defendants, as against the defendants, Ruthenberg and Wagenknecht, regarding the speech of Charles Baker of May 20th, as is evident from the following testimony:

395 Q. Now, do you recall what Baker said on the 20th of May, 1917, in substance, Mr. Schue, in that speech?

A. He said he is of military age and he would refuse to register.

Q. What else did he say that you can recall?

A. And he told about the standpoint of the Socialist Party, the way they voted against conscription and that it was taken by the Local here that all Socialists would refuse to register.

Q. What is the last part of the answer?

A. That all Socialists would refuse to register and induce others, telling them that they would have the support of the Socialist Party.

Q. Do you recall anything else that Baker said on that date? If you do not recall anything else, in order to refresh your memory, I will ask you if you recall if he said anything about himself registering personally?

Mr. Sharts: I object to putting a suggestion like that in a question.

The Court: I understood you to say, Mr. Schue, that what you have testified to was in substance what you remember as to Mr. Baker's speech on the 20th of May, at the Public Square. Is that correct?

The Witness: Yes, sir.

The Court: You may put the question, Mr. Wertz.

Exception by defendant.

The Witness: He said he would refuse to register, he being of military age.

Q. Do you know whether or not, he did, in fact, register?

396 Mr. Sharts: I object.

The Court: The objection to that will be sustained.

Q. In order to refresh your memory, I will ask whether you remember Baker saying anything about him being shot before he would register?

Mr. Sharts: I object to leading the witness to an answer like that.

The Court: You may indicate to him, Mr. District Attorney anything in addition to what has already been said what Mr. Baker said on the subject with reference to being shot before registering.

Exception by defendant.

A. He said he would rather be shot here as a man than in the trenches of Europe as a dog.

47. The Trial Court erred in admitting evidence of the speeches of Wagenknecht and Ruthenberg on May 27th as against Baker and in overruling the motion for a new trial based on that point.

48. The Trial Court erred in refusing the request of defendants, that the testimony of James L. Lind, as follows, be stricken out:

(By Mr. Sharts:)

Q. This statement that you refer to, was it at the police station?

A. Yes, in the Police Inspector's Office.

Q. Was Mr. Schue present?

A. I don't think so. I don't know Mr. Schue.

Mr. Sharts: If Your Honor please, I am going to ask to have the testimony of this witness, with regard to any admissions made by Mr. Wagenknecht, at the police station, stricken out, as not having been made in the presence of Mr. Schue.

397 The Court: I will overrule your request and you may have your exception, but I will make this statement in addition to that.

Mr. Sharts: We will take an exception.

The Court: The jury will not regard any testimony made by this witness as to what transpired at the police station except as it was and was intended to be a repetition of that which had taken place or transpired on the Public Square. Any part of the testimony that is of a different character than that will be disregarded by you.

49. The Trial Court erred in admitting the introduction of evidence by Willbur D. Bacon, and permitting the introduction of a leaflet purporting to have been approved at a meeting attended by the said Willbur D. Bacon, on May 13th, 1917, and at which meeting defendants, Ruthenberg and Wagenknecht were present, on the ground that the said leaflet was alleged to have been approved by some of defendants on May 13th or five days prior to the passage of the Act, as appears from the following testimony:

(By Mr. Wertz:)

Q. Were you present at a meeting some time in May at which Ruthenberg and Wagenknecht were present?

A. Yes, sir.

Q. Do you recall the time of that meeting, the date?

A. It was on or about the 13th day of May.

Mr. Sharts: I object to any further examination on that line.

The Court: What have you to say?

Mr. Wertz: I want to inquire about this resolution. (Handing paper to the Court.)

The Court: Have you seen it?

Mr. Sharts: No.

The Court: Mr. District Attorney, before I rule on it, I think Counsel should see it.

398 Mr. Wertz: Yes.

The Court: The resolution at the bottom is what he is inquiring about.

Mr. Sharts: I will interpose my objection to the introduction of any such leaflet unless it be first established that it was used after the enactment of the law.

The Court: I will say to the jury, and I will say to them now, that no conviction of these defendants or either one of them can be predicated upon any act which was done and performed by them prior to the 18th of May, 1917, but it is in evidence here from one of the witnesses who has testified that after the 18th day of May, 1917, some one or the other of these speakers referred to the action taken by the local organization of the party that they were undertaking to represent and proclaimed in a way *that* that action had been, and you will recall the other testimony, which seems to me makes this evidence competent, if for no other reason than as bearing upon the motive and intent and as characterizing the conduct and attitude of these three defendants on the 20th and 27th of May. I am not undertaking to say what would be. The competency of this witness to testify with respect to any resolution or any action taken or that would bind either of these defendants as participants in the adoption of it or assent thereto has not been disclosed, but this statement will indicate in a general way what my ruling will be as questions arise, so that you may take your exceptions now or interpose them from time to time.

Mr. Sharts: I will take our exception now to the ruling of the Court, and, if Your Honor please, I would like to call your attention further, for the protection of the defendants in this matter, to the fact that we are, I believe, limited strictly to what was brought  
399 to the attention of Mr. Schue. Any activities by the association, either before or after May 18th, if those activities were not brought to the attention of Mr. Schue, cannot be introduced in this case.

The Court: I concur entirely in that position. I shall rule and charge in accordance with it, but the testimony here as to what was said and done by these defendants on the 20th and 27th of May in the presence of Mr. Schue makes competent, if it should appear that the defendants were participants in the adoption of any resolution of this character, the evidence of the fact as characterizing their motive and intent and as bearing upon the primary charge here as to whether they aided and counseled Schue wilfully and as to the intent with which their acts were done and performed which have been testified to. That will be the line of ruling. You may have your exception.

Mr. Sharts: I will take my exception to that and ask Your Honor whether it is necessary to raise the question now as to the form of this resolution in the leaflet as it is offered here?

The Court: We will see about that when we get to it. He has not proved any resolution was adopted and he has not proved the con-

tents of it nor that these defendants were involved in it. I will rule on your objections as we progress.

Q. Do you recall who presided over the meeting?

A. Mr. C. E. Ruthenberg presided.

Q. Is that the gentleman sitting at the table here? (Indicating defendant Ruthenberg.)

A. It is.

Mr. Sharts: Enter an exception.

The Court: The objection will be overruled.

Q. Did you see Mr. Wagenknecht at that meeting?

A. Yes, sir.

100 Mr. Sharts: Enter our objection, and I will ask the witness to wait always until I enter the exception.

The Court: Mr. Stenographer, you will note an objection and exception to each one of these questions and answers, even though Mr. Sharts does not specially mention it and I do not specially rule.

Q. Do you recall whether or not Mr. Baker was present?

(Objection by defendant; overruled; exception.)

A. I do not recall if he was present or not. I did not see him.

Q. Do you recall the presentation at that meeting of a resolution in regard to the registration under the Conscription Act?

(Objection by defendant; overruled; exception.)

Q. I hand you a paper marked "Government's Exhibit No. 1" and ask you to examine it and see if you recognize what that is?

(Objection by defendant; overruled; exception.)

A. That is the resolution passed at the meeting at the Socialist Hall.

Mr. Wertz: I do not know whether the Court and jury heard the answer or not.

Mr. Sharts: I object to the presenting of that clipping. There has been no connection shown between Mr. Schue and any meeting at that time, of the reading of that resolution to Mr. Schue or any definite explanation of that resolution to Mr. Schue.

The Court: I think it would perhaps be prejudicial to your clients if I were to summarize the testimony, as I recall it, of Mr. Schue as to what was said by these defendants in the meetings on the 20th

and 27th of May. For the purpose of bearing upon the intent with which the acts were said and done which have been testified to by Mr. Schue as having taken place in the presence and in his hearing, I will admit the copy of the resolution referred to. I will say this much, that Mr. Schue distinctly testified that it was stated by these speakers as to what had been the attitude of the National Socialist Party in their convention at St. Louis. It was further testified by Mr. Schue that it was stated by these speak-



ers that the local organization of the Socialist Party of which they claimed to be representatives had taken some action, but without going further you will remember the rest of the testimony bearing upon that subject. Under the circumstances, as characterizing and bearing upon the intent which it is necessary here for the government to prove, I regard the resolution as competent evidence.

Mr. Sharts: Before he introduces it I want to call Your Honor's attention further to an omission. How has he identified the resolution referred to in any particular speech that Mr. Schue heard with this particular resolution. If your Honor please, I ask that they introduce first the resolution of the National Socialist Party that they say the speakers on May 20th in the hearing of Mr. Schue referred to and said that the Socialist Party of Cleveland had taken similar action with regard thereto. There is no evidence before the Court at present that this is the resolution in accordance with the resolution of the National Convention of the Socialist Party.

The Court: I will overrule your objection.

Mr. Sharts: Enter our exception.

50. The Trial Court erred in not permitting Counsel to show how many more resolutions were passed at a certain meeting, at which some of defendants were present, as it is evident from the following testimony:

402 (By Mr. Sharts:)

Q. Will the Court permit me to question the witness on a few points?

The Court: That you think goes to the competency of the testimony now offered?

Mr. Sharts: Simply as to his knowledge of how many resolutions were passed and with reference to what.

The Court: That does not go to the competency of the testimony now offered. It might go to his credibility or to his memory or to other matters which are collateral but not to the competency of what is being offered. No, not for that purpose.

Mr. Sharts: Enter our exceptions.

51. The Trial Court erred in permitting testimony of Farasey, of statements made by Wagenknecht in the absence of Schue, as is evident from the following testimony:—

(By Mr. Sharts:)

Q. I will hand you a transcript here and ask you whether you made that transcript from the original notes and whether or not it is a correct transcript?

A. Yes, all of that and I read that over.

Q. I will ask you to read the conversation that took place between Wagenknecht, Mr. DeWoody and yourself and Mr. Lind at the police station, following his arrest?

Mr. Sharts: If Your Honor please, I want to enter my objection at this time. Mr. Schue is charged as the principal who refused to

register, and the statements that have been made here by the reading of those notes are the only statements that were made or that could possibly have been made in the hearing of Mr. Schue. Any further statements cannot be added on top of and in addition to what has been presented as a complete record of the statements made by Mr. Wagenknecht.

403 The Court: You do not object to the use of the transcript because he has not produced the notes here from which he says he has transcribed it?

Mr. Sharts: I understood that he was reading from his original notes at the first.

The Court: He did at the first. Now, on the conversation at the jail, he says that he does not have his original notes here but he has the transcript of them which he himself made and says it is a correct transcript. If you insist that he shall send for his original notes and have them here for your examination, if you wish to examine them before he reads the transcript or reads from it, I would rule you are entitled to that.

52. The Trial Court erred in permitting the witness Farasey to testify as to part of his notes to the prejudice of defendants as is evident from the following testimony:—

The Court: What has become of that part of your notes?

The Witness: I cannot tell you.

The Court: Have you searched in every place where they probably would be?

The Witness: Hastily, yes.

The Court: Have you any reason to believe that a further search would produce them?

The Witness: No, I have not.

The Court: Did you make a transcript of them before you lost or destroyed part of your notes?

The Witness: Yes, sir.

The Court: Were those notes correctly taken at the time?

The Witness: Yes, sir, to the best of my ability.

The Court: What as to the transcript that was made from that part of your notes which are missing, was that correctly made?

404 The Witness: That was correctly made.

The Court: Have you seen the transcript?

The Witness: Yes, sir.

The Court: How long after the incident was it that you made the transcript?

The Witness: I just had time to have supper, about an hour or an hour and a half.

The Court: With that preliminary examination, I will rule that he may use part of his notes that he has here and the transcript made under those circumstances for the part of it as to which he cannot produce his notes.

Mr. Sharts: Enter our exception.

53. The Trial Court erred in admitting all of the testimony of the stenographer to the prejudice of the defendants, as is evident from the following testimony:

The Court: Have you anything more, Mr. District Attorney, so far as you would now know?

Mr. Wertz: We rest.

The Court: If you have anything more, we will receive it at nine o'clock tomorrow morning. The general denial tendered by the District Attorney this afternoon, I will permit to be filed in accordance with the leave that was asked and given yesterday, Mr. Sharts. I have had the stenographer transcribe what occurred. You may have an exception.

Mr. Sharts: Our exceptions are in. \* \* \*

54. The Trial Court erred in refusing to direct a verdict for the defendants or any one of them or two of them at the close of the Plaintiff's testimony, there having been no corroborative evidence offered to support the statements of defendant Schue, who was an alleged accomplice.

55. The Trial Court erred in declining the attempt of defendants to produce the constitution and by laws of the Socialist Party, to show the limitation of rights and acts of defendants, as  
105 officers and members of the Socialist Party, as is shown by the following testimony:—

(By Mr. Sharts:)

Q. You have spoken about a constitution and by-laws?

A. Yes, sir.

Q. I will ask you if that is the constitution and by-laws that you referred to? (Handing pamphlet to the witness.)

A. That is.

Q. Is the pledge in there the pledge that is taken by the members of the Socialist organization?

A. Yes.

Q. I wish you would read that pledge to the jury.

Mr. Wertz: If the Court please, I object.

The Court: Do you want to examine it before it is ruled on? (Pamphlet handed to Mr. Wertz.)

Mr. Wertz: I object.

The Court: I sustain the objection to it on the ground of immateriality and irrelevancy.

Mr. Sharts: Enter our exception.

55. The Trial Court erred in refusing to permit these defendants to rebut evidence of intent by producing evidence that they had constantly advised registration when inquired of, as is evident from the following testimony:—

(By Mr. Sharts:)

Q. You are within the registration age? Have you registered?

A. (Mr. John Fromholtz.) Yes, sir.

Q. I will ask you whether or not you consulted Mr. Ruthenberg regarding registration?

A. No.

Mr. Wertz: I object.

Q. What did you say "No"?

A. I have not asked Mr. Ruthenberg about registration.

406 The Court: I regard that as incompetent testimony but I will overrule the objection for the present as he says he did not consult him.

And as is evident from the following testimony:—

(By Mr. Sharts:)

Q. Have you been asked by any one what they should do in case of registration.

A. (By Charles Baker.) I have.

Q. By whom?

A. I was asked by three persons, members of the party from Lorain, Ohio, who came to Cleveland on Decoration Day and asked my advice, as the state organizer, what they shall do on the question of registration.

Mr. Wertz: I object.

Mr. Sharts: If Your Honor please, it seems to me that the testimony is admissible at least to show the motive and purpose and consistency of the speech that he has made, to show the attitude of the speaker with regard to registration, which has been questioned.

The Court: No, I will sustain the objection to that. The charge here is a specific charge that is confined to his acts and conduct on a specific occasion when he was listened to by some person and when it is alleged he caused that person to violate the law and thereby to make the defendant here a participant in it. That fact cannot be affected by proof as to what his attitude was on other and different occasions. I will sustain the objection.

Mr. Sharts: Enter the exception of the defendant.

56. The Trial Court erred in permitting the prosecution to ask Ruthenberg and in insisting that Ruthenberg answer, the questions of explanations to show, viz., how the young men of the Country could be conscripted without first registering, when the witness did not urge conscription, as is evident from the following testimony:—

407 Q. Will you explain to the jury how in your mind it was *probable* to conscript the Socialist or the young men of the country without first registering, under this law?

Mr. Sharts: I object.

The Court: I think that is legitimate.

Mr. Sharts: If your Honor please, the point is this: He is asking him to explain how they could conscript them without registering. He has not urged their conscription.

The Court: I will overrule your objection, and on this ground: The witness has undertaken, every time that the word "registration" has appeared in any of the transcript of what he said upon that occasion, to say that he did not use the word "registration," but it was "conscription," undertaking to draw in his mind some distinction between opposing registration for conscription and upholding conscription. Now, as bearing upon his intent, and what he meant by his acts and words, I consider the District Attorney's question competent.

Mr. Sharts: Enter the exception of the defendants.

The Witness (Mr. Ruthenberg): I would gladly state, in reply to the question, that this difference existed in my mind: A man might submit to registration, he might voluntarily go and register his name as a man between the ages, go through that formality, which this Court itself, I believe, has said in its charge to the Grand Jury was a mere formality preceding the act——

The Court: No, I did not say anything like that.

The Witness: That is as I remember it. And he might submit to that and later, if he happened to be one of — victims who  
408 was selected to go and shoot his fellow human beings, he might well, as tens of thousands of men in England have done, refused to be conscripted and to murder his fellow human beings. That is my position.

57. The Trial Court erred in not directing a verdict for the defendants at the close of all the testimony, for the same reason.

58. The Trial Court erred in overruling the motion of the defendants for a new trial for the reasons therein given, and particularly on the ground of newly discovered evidence, tending to show that Schue perjured himself on the witness stand in saying that he had had no connection with the Socialist organization other than to attend the meetings of May 20th and May 27th.

59. The Trial Court erred in overruling the motion in arrest of judgment for the reasons therein given, wherefore the defendants, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, each for himself and jointly, pray that the judgment and sentence herein may be reversed and held for naught.

CHARLES E. RUTHENBERG,  
ALFRED WAGENKNECHT,  
CHARLES BAKER,

By MORRIS H. WOLF,  
JOS. W. SHARTS,

*Attorneys for Defendants.*

409

*Order of Severance.*

(Ent. July 25, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

VS.

ALPHONS J. SCHUE, CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT and CHARLES BAKER.

This matter coming before the Court on the application of Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, parties defendant, for a Writ of Error; and Alphons J. Schue, party defendant, being present in person and by counsel, and the said Alphons J. Schue, having declined to join in said application or prosecute error, it is hereby considered by the court that an Order of Severance be allowed, and the same is hereby allowed, granting to the said Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker the right to prosecute said proceedings in error independently of the said Alphons J. Schue.

410

*Order Allowing Writ of Error.*

(Ent. July 25, 1917, by Judge Westenhaver.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

VS.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT and CHARLES BAKER.

This 25th day of July, 1917, came Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, defendants, by their attorneys, and each for himself and jointly, filed and presented to this court their petition, praying for an allowance of a writ of error and assignment of errors to be urged by them; praying also that a transcript of the record, proceedings, papers and exhibits upon which the judgment and sentence herein were rendered, duly authenticated, be sent to the Supreme Court of the United States, and that such other and further proceedings may be had, as may be proper in the premises.

On consideration whereof the court does allow the Writ of Error, and orders that said Writ of Error shall operate as a supersedeas, and that said court has fixed a supersedeas and bail bond on behalf of each of said defendants in the sum of \$5,000.00 Dollars, the said bond to be approved by the clerk.

411

*Writ of Error.*

The Supreme Court of the United States of America.

U. S. District Court for the Northern District of Ohio, Eastern Division.

No. 3873.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Northern District of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between The United States of America as plaintiff and Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, defendants, said case being No. 3873 on the Docket of the U. S. District Court for the Northern District of Ohio, Eastern Division, a manifest error hath happened, to the great damage of the said Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, and each of them, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if the judgement be therein given, that then and under your seal, distinctly and openly, you send the records and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington in the District of Columbia on the — day of — next, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice  
412 of the United States the 25<sup>th</sup> day of July, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America the one hundred and forty-first.

[Seal of the District Court, Northern Dist. of Ohio.]

B. C. MILLER,

*Clerk of the District Court of the United States  
for the Northern District of Ohio.*

Allowed by

D. C. WESTHAVER, *Judge.*

July 25, 1917.

\*Not exceeding — days from the day of signing the citation.

14—656

413 [Endorsed:] In the District Court of the United States for the Northern District of Ohio, Eastern Division. No. 3873.

The United States of America, Plaintiff, vs. Alphons J. Schue, Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker, Defendants.

Writ of Error Filed Jul. 25, 1917, at — o'clock — M. B. C. Miller, Clerk U. S. District Court, N. D. O.

Morris H. Wolf, Cleveland, O., Joseph W. Sharts, Dayton, O., Attorneys for Defendants.

*Return on Writ of Error.*

UNITED STATES OF AMERICA,

*Northern District of Ohio, ss:*

In pursuance to the command of the within writ of error, I. B. C. Miller, clerk of the United States District Court within and for said district, do herewith transmit under the seal of said court, a full, true and complete copy of the record and proceedings of said court in the cause and matter in said writ of error stated, together with all things concerning the same, in accordance with the precept filed, to the Supreme Court of the United States.

There is annexed hereto and made part of this return the writ of error and citation to said defendant in error.

Witness my official signature and the seal of said court at Cleveland, in said District, this 21st day of August, A. D. 1917, and in the 142nd year of the independence of the United States of America.

[Seal of the District Court, Northern Dist. of Ohio.]

B. C. MILLER, *Clerk*,  
By F. J. DENZLER,  
*Deputy Clerk*.

Filed Aug. 21, 1917, at — o'clock — M. B. C. Miller, Clerk U. S. District Court, N. D. O.

414

*Citation.*

U. S. District Court for the Northern District of Ohio, Eastern Division.

No. 3873.

UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at



the City of Washington, in the District of Columbia, on the \*20 day of August, next, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Northern District of Ohio, wherein Charles E. Ruthenberg, Alfred Wagenknecht and Charles Baker are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgement rendered against the said plaintiffs in error, and each of them, as in said petition for a Writ of Error mentioned and said Assignment of Error filed with said petition for a Writ of Error, should not be corrected, and why speedy justice for the parties in that behalf should not be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 25<sup>th</sup> day of July, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America, the one hundred and forty-first.

D. C. WESTENHAVER,

*Judge of the District Court.*

\*Not exceeding — days from day of signing.

Service of the above citation is hereby acknowledged and the appearance of the United States of America is hereby entered.

*U. S. Attorney.*

415 [Endorsed:] U. S. Marshal's No. —. In the District Court of the United States for the Northern District of Ohio, Eastern Division. No. 3873.

The United States of America, Plaintiff, vs. Charles E. Ruthenberg, Alphons J. Schue, Alfred Wagenknecht, and Charles Baker, Defendants.

Citation. Filed Jul. 27, 1917 at — o'clock — M. B. C. Miller, Clerk, U. S. District Court, N. D. O.

Morris H. Wolf, Cleveland, O., Joseph W. Sharts, Dayton, O., Attorneys for Defendants.

*U. S. Marshal's Return.*

THE UNITED STATES OF AMERICA.

*Northern District of Ohio, ss:*

Received this writ at Cleveland, O., July 27, 1917, and on the same day at the same place, I served it on the within named The United States of America, by delivering to Jos. C. Breitenstein, Asst. U. S. Atty. for the said The United States of America, and for the Northern District of Ohio, at Cleveland, O., personally, a true and certified copy hereof, with all endorsements thereon.

CHAS. W. LAPP,

*U. S. Marshal,*

By T. E. WALSH, *Deputy.*

*Marshal's Fees.*

Service <i>Spa.</i> .....	\$2.
Travel <i>Spa.</i> .....	
	<hr/>
	\$2.

416 *Application for Withdrawal of Exhibits.*

(Filed August 20, 1917.)

In the District Court of the United States for the Northern District  
of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT, and CHARLES  
BAKER, Defendant.

*Application for Withdrawal of Exhibits.*

Now come defendants in the above entitled action, by their attorneys, and respectfully ask the Court that they be permitted to withdraw the exhibits offered by the Government in the above action and which exhibits are now attached to the bill of exceptions, for the reason that the said exhibits must be attached to a record certified to the Supreme Court of the United States.

MORRIS H. WOLF,

JOS. W. SHARTS,

*Attorneys for Defendants.*417 *Order for the Withdrawing of Exhibits.*

(Entered August 20, 1917.)

No. 3873. Criminal.

THE UNITED STATES OF AMERICA

vs.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT and CHARLES  
BAKER.

On application of defendants for permission to withdraw exhibits for the purpose of attaching them to a record to be certified to the Supreme Court of the United States, it is hereby ordered by the Court that all of said exhibits offered and introduced on behalf of

the plaintiff, and defendants, be withdrawn from the files of this Court, and forwarded to the Clerk of the Supreme Court of the United States, for use at the hearing of this cause in the said Supreme Court of the United States.

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*Precipe for Transcript.*

(Filed August 4, 1917.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 3873. Criminal.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

CHARLES E. RUTHENBERG, ALFRED WAGENKNECHT and CHARLES BAKER, Defendants.

*Precipe for Transcript.*

To the Honorable Clerk:

Please prepare transcript of record in the above entitled cause, and include therein the following papers:

Indictment.

Challenge to the Array.

Motion to Quash.

Plea in abatement.

Demurrer.

Answer of United States to Challenge to Array.

Order overruling challenge to the array, motion to quash, plea in abatement and demurrer.

Amended challenge to the array.

Orders on trial, verdict, etc.

Motion for a new trial.

Motion in arrest of judgment.

Order overruling motion for a new trial, and motion in arrest of judgment.

Order approving narrative form of testimony.

Narrative form of testimony.

Petition for writ of error.

Assignment of errors.

Amended assignment of errors.

Order allowing writ of error.

Writ of error.

Citation.

Order of Severance.

Motion and Order withdrawing exhibits.

This Precipe.

Please deliver all papers to the Clerk of the Supreme Court of the United States, at Washington, D. C.

Serve copy of Precipe on Attorneys for Government by Marshal.

CHARLES E. RUTHENBERG,

ALFRED WAGENKNECHT,

CHARLES BAKER,

By MORRIS H. WOLF,

JOS. W. SILARTS,

*Attorneys for Defendant.*

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(Endorsement.)

THE UNITED STATES OF AMERICA,

*Northern District of Ohio, ss:*

*U. S. Marshal's Return.*

Received this writ at Cleveland, O. August 4th, 1917, and on the same day and at the same place I served the within attorneys for the Government, by delivering to Joe. C. Breitenstein as the Asst. U. S. District Attorney for the said Government for the Northern District of Ohio, at Cleveland, O., personally a true and certified copy hereof with all endorsements thereon.

Marshal's Fees ..... \$2.00

Travel ..... .06

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\$2.06

CHAS. W. LAPP,

*U. S. Marshal.*

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*Certificate of Clerk.*

NORTHERN DISTRICT OF OHIO, *ss:*

I, B. C. Miller, Clerk of the District Court of the United States for said District, do hereby certify that the annexed and foregoing pages contain a full, true and complete copy of the final record, including the bill of exceptions in narrative form, petition for writ of error, assignments of error and bond on writ of error, and all proceedings in said cause in accordance with the precipe for transcript filed by plaintiff in error, the originals of all which except certain exhibits withdrawn by leave of court are now in my custody as clerk of said court.

There is also annexed to and transmitted with such transcript of record, the writ of error and the citation issued and allowed in this case.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court at Cleveland in said district this — day of

August, A. D. 1917, and in the 142nd year of the independence of the United States of America.

[Seal of the District Court, Northern Dist. of Ohio.]

B. C. MILLER, *Clerk.*

By F. J. DENZLER,

*Deputy Clerk.*

Endorsed on cover: File No. 26,123. N. Ohio D. C. U. S. Term No. 656. Charles E. Ruthenberg, Alfred Wagenknecht, and Charles Baker, plaintiffs in error, vs. the United States of America. Filed August 30th, 1917. File No. 26,123.